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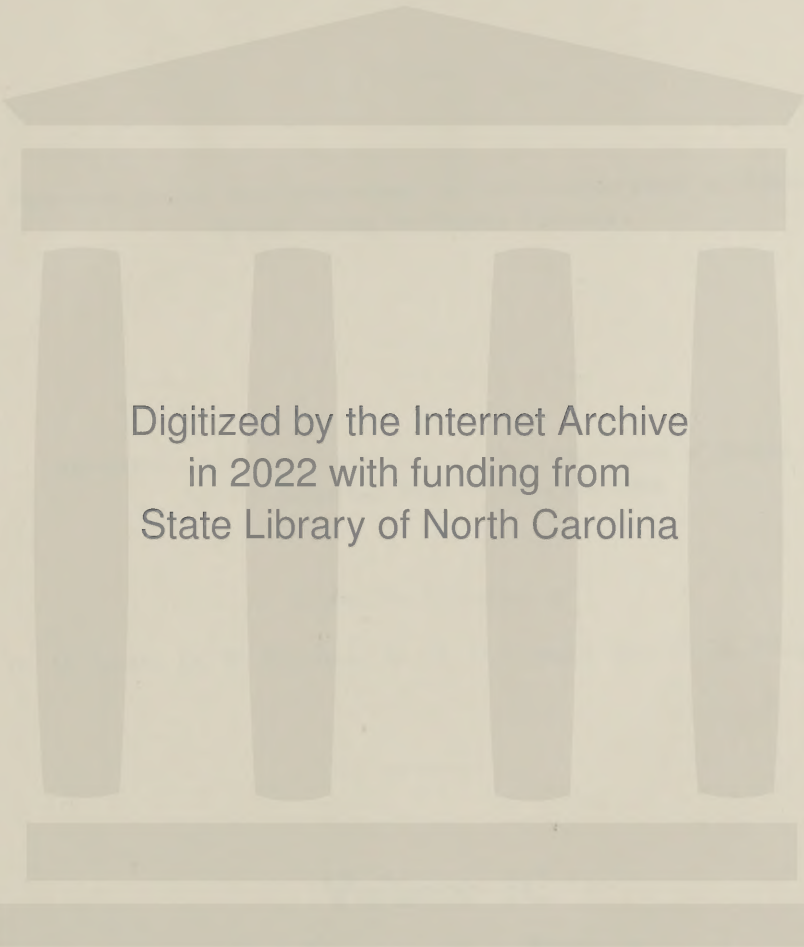








THE GENERAL STATUTES OF  
NORTH CAROLINA



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# THE GENERAL STATUTES OF NORTH CAROLINA

Containing General Laws of North Carolina through  
the Legislative Session of 1965

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PREPARED UNDER THE SUPERVISION OF THE DEPARTMENT OF JUSTICE  
OF THE STATE OF NORTH CAROLINA

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Annotated, under the Supervision of the Department of Justice,  
by the Editorial Staff of the Publishers

*Under the Direction of*

W. O. LEWIS, D. W. PARRISH, JR., S. G. ALRICH AND W. M. WILLSON

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Volume 1C  
1965 REPLACEMENT VOLUME

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THE MICHIE COMPANY, LAW PUBLISHERS  
CHARLOTTESVILLE, VA.  
1965

# THE GENERAL STATUTES OF NORTH CAROLINA

Compiled, General Laws of North Carolina through  
the Legislative Session of 1965

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Volume 10

1965 Session of the General Assembly

The Michie Company  
Raleigh, North Carolina



# Scope of Volume

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## Statutes:

Full text of Chapters 15 through 20 of the General Statutes of North Carolina, including all enactments through the Legislative Session of 1965 heretofore contained in 1953 Recompiled Volume 1C of the General Statutes and the 1965 Cumulative Supplement thereto.

## Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports volumes 1-265 (p. 217).

Federal Reporter volumes 1-300.

Federal Reporter 2nd Series volumes 1-347 (p. 320).

Federal Supplement volumes 1-242 (p. 512).

United States Reports volumes 1-381 (p. 531).

Supreme Court Reporter volumes 1-85.

North Carolina Law Review volumes 1-43 (p. 665).

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# Abbreviations

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(The abbreviations below are those found in the General Statutes which refer to prior codes.)

P. R. ....	Potter's Revisal (1821, 1827)
R. S. ....	Revised Statutes (1837)
R. C. ....	Revised Code (1854)
C. C. P. ....	Code of Civil Procedure (1868)
Code .....	Code (1883)
Rev. ....	Revisal of 1905
C. S. ....	Consolidated Statutes (1919, 1924)



# Preface

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Volume 1 of the General Statutes of North Carolina of 1943 was replaced in 1953 by recompiled volumes 1A, 1B and 1C, containing Chapters 1 through 27 of the General Statutes, as amended and supplemented by the enactments of the General Assembly down through the 1951 Session. Recompiled volume 1C has now been replaced by replacement volumes 1C and 1D, which combine the statutes and annotations appearing in the previous volume 1C and in the 1965 Cumulative Supplement thereto.

Volume 1C contains Chapters 15 through 20. Volume 1D contains Chapters 21 through 27.

In replacement volume 1C the form and the designations of subsections, subdivisions and lesser divisions of sections have in many instances been changed, so as to follow in every case the uniform system of numbering, lettering and indentation adopted by the General Statutes Commission. For example, subsections in the replacement volume are designated by lower case letters in parentheses, thus: (a). Subdivisions of both sections and subsections are designated by Arabic numerals in parentheses, thus: (1). Lesser divisions likewise follow a uniform plan.

The historical references appearing at the end of each section have been rearranged in chronological order. For instance, the historical references appended to § 31-5.1 read as follows: (1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2; 1840, c. 62; R. C., c. 119, s. 22; Code, s. 2176; Rev., s. 3115; C. S., s. 4133; 1945, c. 140; 1953, c. 1098, s. 3.) In this connection attention should be called to a peculiarity in the manner of citing the early acts in the historical references. The acts through the year 1825 are cited, not by the chapter numbers of the session laws of the particular years, but by the chapter numbers assigned to them in Potter's Revisal (published in 1821 and containing the acts from 1715 through 1820) or in Potter's Revisal continued (published in 1827 and containing the acts from 1821 through 1825). Thus, in the illustration set out above the citations "1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2" refer to the chapter numbers in Potter's Revisal and not to the chapter numbers of the Laws of 1784 and 1819, respectively. The chapter numbers in Potter's Revisal and Potter's Revisal continued run consecutively, and hence do not correspond, at least after 1715, to the chapter numbers in the session laws of the particular years. After 1825 the chapter numbers in the session laws are used.

This replacement volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

THOMAS WADE BRUTON,  
*Attorney General.*

*December 1, 1965.*





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**Article 22.****Review of Criminal Trials.**

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- 15-217.1. Filing petition with clerk; delivery of copy to solicitor; review of petition by judge.
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**ARTICLE 1.***General Provisions.*

§ 15-1. **Statute of limitations for misdemeanors.** — The crimes of deceit and malicious mischief, and the crime of petit larceny where the value of the property does not exceed five dollars, and all misdemeanors except malicious misdemeanors, shall be presented or found by the grand jury within two years after the commission of the same, and not afterwards: Provided, that if any indictment found within that time shall be defective, so that no judgment can be given thereon, another prosecution may be instituted for the same offense, within one year after the first shall have been abandoned by the State. (1826, c. 11; R. C., c. 35, s. 8; Code, s. 1177; Rev., s. 3147; 1907, c. 408; C. S., s. 4512; 1943, c. 543.)

**Cross Reference.**—As to what are misdemeanors, see §§ 14-1 and 14-3 and annotations thereto.

**General Consideration.**—The time between the commission of the offense and the bringing into court of the presentment should be estimated in determining whether the prosecution is barred. *State v. Cooper*, 104 N.C. 890, 10 S.E. 510 (1889). The time stated in the indictment does not govern, *State v. Newsom*, 47 N.C. 173 (1855). The State can go back two years prior thereto although the indictment marks the beginning of the prosecution. The indictment arrests the running of the statute of limitations and the statute does not begin

to run from an entry of nol. pros. "with leave." *State v. Williams*, 151 N.C. 660, 65 S.E. 908 (1909).

**Meaning of Malicious Misdemeanors.**—

When, in the former wording of this section, the legislature used the words "other malicious misdemeanors," which immediately followed the words "malicious mischief," it evidently intended to describe offenses of which malice was a necessary ingredient to constitute the criminal act, as in the case of malicious mischief, and it was not the purpose to include within the exception from the operation of that section such offenses as would be misdemeanors, even in the absence of malice, and

when malice, if present, would be only a circumstance of aggravation, which the court might consider in imposing the punishment. *State v. Frisbee*, 142 N.C. 671, 55 S.E. 722 (1906).

**A violation of § 14-353 is not a malicious misdemeanor.** *State v. Brewer*, 258 N.C. 533, 129 S.E.2d 262 (1963).

**A conspiracy to commit a misdemeanor is a misdemeanor.** *State v. Brewer*, 258 N.C. 533, 129 S.E.2d 262 (1963).

**And Each Overt Act Tolls Statute.**—A conspiracy is a continuing offense so that the statute of limitations is tolled as to the original conspiracy each time an overt act is committed in furtherance of the purpose and design of the conspiracy. *State v. Brewer*, 258 N.C. 533, 129 S.E.2d 262 (1963).

Where a count and the indictment alleged that a conspiracy continued from time to time with the commission of overt acts by the alleged conspirators in furtherance of conspiracy and to effectuate its unlawful purpose within two years of the finding of the indictment, the trial court correctly overruled defendants' motion to quash the first count in the indictment on the ground that a prosecution on such count was barred by this section. *State v. Brewer*, 258 N.C. 533, 129 S.E.2d 262 (1963).

**Date on Which Statute Is Tolloed.**—In all misdemeanor cases, where there has been a conviction in an inferior court that had final jurisdiction of the offense charged, upon appeal to the superior court the accused may be tried upon the original warrant and the statute of limitations is tolled from the date of the issuance of the warrant. *State v. Underwood*, 244 N.C. 68, 92 S.E.2d 461 (1956).

In criminal cases where an indictment or presentment is required, the date on which the indictment or presentment has been brought or found by the grand jury marks the beginning of the criminal proceeding and arrests the statute of limitations. *State v. Underwood*, 244 N.C. 68, 92 S.E.2d 461 (1956).

**Meaning of "Secret Manner."**—For construction of former provision, see *State v. Crowell*, 116 N.C. 1052, 21 S.E. 502 (1895). See for example, *State v. Watts*, 32 N.C. 369 (1849).

**"Deceit" as Used in Former Section.**—There has never been such an indictable offense as "deceit" but the meaning of this section has always been that misdemeanors, the gist of which was a malice or deceit, were within the exception of the section as formerly appearing. In *State v.*

*Christiansbury*, 44 N.C. 46 (1852), it was held that there being no such offense as "deceit" it would apply to "cheating by false token" of which deceit was the gist but would not include "conspiracy to cheat" the gist of which offence is the conspiracy and the cheating but an aggravation. That decision did not restrict deceit to "cheating by false token" but instanced that as an offense coming within the general description of misdemeanors by deceit. *State v. Crowell*, 116 N.C. 1052, 21 S.E. 502 (1895).

**What Offenses Barred.**—Slandering an innocent woman is not barred within two years. *State v. Claywell*, 98 N.C. 731, 3 S.E. 920 (1887). No length of possession can bar an action to abate a public nuisance. *State v. Holman*, 104 N.C. 861, 10 S.E. 758 (1889). Seduction is not barred. *State v. Crowell*, 116 N.C. 1052, 21 S.E. 502 (1895).

A malicious assault cannot be the basis of an action two years after commission. *State v. Frisbee*, 142 N.C. 671, 55 S.E. 722 (1906).

The section has no application to conspiracy which is a felony. *State v. Mallett*, 125 N.C. 718, 34 S.E. 651 (1899). Bastardy proceedings are not governed by this section. *State v. Perry*, 122 N.C. 1043, 30 S.E. 139 (1898).

**What Constitutes a Presentment.**—See *State v. Morris*, 104 N.C. 837, 10 S.E. 454 (1889).

**Trial on Second Bill after Two Years Barred.**—Even an indictment within the time will not uphold a trial and conviction on a second bill found after the statutory period. *State v. Tomlinson*, 25 N.C. 32 (1842); *State v. Hedden*, 187 N.C. 803, 123 S.E. 65 (1924).

**Where a warrant charging a misdemeanor is amended to charge a felony,** defendant's plea of the statute of limitations on the misdemeanor count becomes immaterial. *State v. Sanderson*, 213 N.C. 381, 196 S.E. 324 (1938).

**Preliminary Warrants Not Included.**—There is no saving clause in this section as to the effect of preliminary warrants before a justice of the peace or other committing magistrate, and the law must be construed and applied as written. There must be a presentment or indictment within two years from the time of the offense committed and not afterwards. *State v. Hedden*, 187 N.C. 803, 123 S.E. 65 (1924).

**Necessity for Pleading Statute.**—For a person charged with the commission of a criminal offense to avail himself of the alleged running of the statute of limitations, he must either specifically plead it



or in apt time bring it to the attention of the court. *State v. Brinkley*, 193 N.C. 747, 138 S.E. 138 (1927).

Whether or not the court below will allow the statute of limitations as a defense to the action, where the same has not been pleaded or mentioned until the argument before the jury, is a matter of discretion. *Privett v. Calloway*, 75 N.C. 23 (1876).

Upon a trial on indictment for the sale of intoxicants where there was evidence of sales at undisclosed times, it would not be presumed that such sales occurred more

than two years next preceding the prosecution when defendant has not pleaded this section, or in apt time called it to the court's attention or offered evidence as to the dates of sale. *State v. Colson*, 222 N.C. 28, 21 S.E.2d 808 (1942).

#### Wrong Name in Bill of Indictment.—

A bill of indictment against a person by a wrong name, which is pleaded to in abatement, and the plea found, is, nevertheless, the same cause of action, and the elapse of two years is no bar to prosecution. *State v. Hailey*, 51 N.C. 42 (1858).

**§ 15-2. Issue and return of criminal process.**—All process, warrants and precepts, issued by any judge or justice of the peace, or clerk of any court, on any criminal prosecution, may issue at any time, and be made returnable to any day of the term of the court, to which such warrant, process, or precept is returnable. (1777, c. 115, s. 15, P. R.; R. C., c. 35, s. 9; Code, s. 1178; Rev., s. 3148; C. S., s. 4513.)

**§ 15-3. Date of receipt and service indorsed on process.** — Every sheriff or other officer shall indorse on all process and subpoenas issuing in criminal cases, whether for the State or defendant, the day when such process and subpoenas came to hand, and also the day of their execution; and on failure of any sheriff or other officer to perform either of said duties he shall forfeit and pay the sum of ten dollars for every case of neglect, to be recovered for the use of the State, in the same manner as forfeitures are recovered against sheriffs by parties in civil suits for failure to make due return of process delivered to them. (1850-1, c. 57; R. C., c. 35, s. 10; Code, s. 1179; Rev., s. 3149; C. S., s. 4514.)

**Cross References.**—As to forfeitures in civil actions, see §§ 162-14 and 2-41. As to criminal liability for failure to return process, see § 14-242.

**§ 15-4. Accused entitled to counsel.** — Every person, accused of any crime whatsoever, shall be entitled to counsel in all matters which may be necessary for his defense. (1777, c. 115, s. 85, P. R.; R. C., c. 35, s. 13; Code, s. 1182; Rev., s. 3150; C. S., s. 4515.)

**Cross References.**—As to court's power to limit argument, see § 84-14. As to constitutional provisions for counsel, see the N.C. Const., Art. I, § 11, and the sixth amendment to the U.S. Constitution.

**Editor's Note.** — For note on the right of counsel, see 32 N.C.L. Rev. 331 (1954).

**A Constitutional Right.**—In all criminal prosecutions every man has the right to have counsel for his defence. Const., Art. I, § 11. *State v. Sykes*, 79 N.C. 618 (1878). See also *State v. Hardy*, 189 N.C. 799, 128 S.E. 152 (1925).

**Right Is a Mandate in Capital Felony Cases.**—The right to have counsel as well as the right of confrontation is guaranteed. Art. I, § 11, N. C. Const. Where the crime charged is a capital felony this right becomes a mandate. *State v. Farrell*, 223 N.C. 321, 26 S.E.2d 322 (1943); *State v. Hedgebeth*, 228 N.C. 259, 45 S.E.2d 563 (1947); *In re Taylor*, 229 N.C. 297, 49 S.E.2d 749 (1948); *In re Taylor*, 230 N.C.

566, 53 S.E.2d 857 (1949). See note to § 15-5. As to right made statutory, see § 15-4.1.

**And Discretionary in Cases Less than Capital.**—The appointment of counsel for a defendant charged with felonies less than capital is within the discretion of the trial court. *In re Taylor*, 230 N.C. 566, 53 S.E.2d 857 (1949).

A defendant has the constitutional right to be represented by counsel, and to have counsel assigned if requested where the circumstances are such as to show apparent necessity of counsel to protect his rights, but in the absence of request the propriety of providing counsel for a person accused of an offense less than a capital felony rests in the sound discretion of the trial judge. *State v. Chesson*, 228 N.C. 259, 45 S.E.2d 563 (1947).

**Petition for Writ of Coram Nobis Granted for Failure to Appoint Counsel.**—Where verified petition for leave to apply to the superior court for writ of error

coram nobis, the record in the cases in which petitioner was convicted, and habeas corpus proceedings instituted by him, make it appear that petitioner was confronted with indictments for capital offenses and indictments for felonies less than capital, and that the trial court failed to appoint counsel to represent him notwithstanding his alleged inability to employ counsel and his request for counsel, the petition will be allowed in respect of the capital felonies and denied in respect of the felonies less than capital upon such prima facie showing. *In re Taylor*, 230 N.C. 566, 53 S.E.2d 857 (1949).

**Counsel Allowed Reasonable Time to Prepare Case.** — The two—the right to

counsel and the right of confrontation—are closely interrelated and, together, form an integral part of a fair trial. Hence, this requirement as incorporated in this section, was not intended to be a mere formality. It does not contemplate that counsel shall “be compelled to act without being allowed reasonable time within which to understand the case and prepare for the defense.” *State v. Farrell*, 223 N.C. 321, 26 S.E.2d 322 (1943). See note to Art. I, § 11, N.C. Const.

**Stated in** *Powell v. Alabama*, 287 U.S. 45, 53 Sup. Ct. 55, 77 L. Ed. 158, 84 A.L.R. 527 (1932).

**Cited in** *Hammond v. North Carolina*, 227 F. Supp. 1 (E.D.N.C. 1964).

**§ 15-4.1. Appointment of counsel for indigent defendants; plea of guilty by defendant without counsel; trial transcript and records for appeal by indigent defendant.**—When a defendant charged with a felony is not represented by counsel, before he is required to plead the judge of the superior court shall advise the defendant that he is entitled to counsel. If the judge finds that the defendant is indigent and unable to employ counsel, he shall appoint counsel for the defendant but the defendant may waive the right to counsel in all cases except a capital felony by a written waiver executed by the defendant, signed by the presiding judge and filed in the record in the case. The judge may in his discretion appoint counsel for an indigent defendant charged with a misdemeanor if in the opinion of the judge such appointment is warranted unless the defendant executes a written waiver of counsel as above specified. A defendant with or without counsel may plead guilty but if the defendant is without counsel, the judge shall inform the accused of the nature of the charge and the possible consequences of his plea, and as a condition of accepting the plea of guilty the judge shall examine the defendant and shall ascertain that the plea was freely, understandably and voluntarily made, without undue influence, compulsion or duress, and without promise of leniency, but a defendant without counsel cannot plead guilty to an indictment charging a capital felony. Unless the judge determines that the plea of guilty was so made, it shall not be accepted. In case of an appeal to the Supreme Court the judge shall appoint counsel for such appeal or continue the services of counsel already appointed for the trial. The judge shall appoint counsel as soon as possible and practicable to the end that counsel so appointed may have adequate notice and sufficient time to prepare for a defense.

When an appeal is taken under this section the county shall make available trial transcript and records required for an adequate and effective appellate review. (1949, c. 112; 1963, c. 1080, s. 1.)

**Editor's Note.**—For brief comment on this section, see 27 N.C.L. Rev. 422.

For comment on indigent defendants, see 42 N.C.L. Rev. 322 (1964).

The 1963 amendment rewrote this section.

**Section Implements Constitutional Provision.** — This section implements Article I, § 11 of the State Constitution. *State v. Simpson*, 243 N.C. 436, 90 S.E.2d 708 (1956).

**When Appointment of Counsel Mandatory.**—Counsel must be appointed for per-

son accused of first degree murder who is unable to employ counsel, although the State, after arraignment and plea, elects to press only for second degree murder. And it is immaterial whether accused requested the appointment. *State v. Simpson*, 243 N.C. 436, 90 S.E.2d 708 (1956).

**An indigent defendant must accept counsel appointed by the court,** in the absence of any substantial reason for replacement of court-appointed counsel. *State v. McNeil*, 263 N.C. 260, 139 S.E.2d 667 (1965).



An indigent defendant in a criminal action, in the absence of statute, has no right to select counsel of his own choice to defend him, and there is no statute in North Carolina that gives him the right to select counsel. *State v. McNeil*, 263 N.C. 260, 139 S.E.2d 667 (1965).

**Unless He Desires to Present His Own Defense.**—See *State v. McNeil*, 263 N.C. 260, 139 S.E.2d 667 (1965).

**Plea of Nolo Contendere Treated as Plea of Guilty.**—A plea of nolo contendere, although not strictly a confession of guilt, nevertheless will support the same punishment as a plea of guilty. The rule of strict construction in favor of an accused, therefore, requires that a plea of nolo contendere be treated as a plea of guilty insofar as the right to be examined by the judge and to be informed as to the consequences of such plea. *State v. Payne*, 263 N.C. 77, 138 S.E.2d 765 (1964).

**Defendant can waive his right to counsel without signing a written waiver** in a criminal action in North Carolina. *State v. McNeil*, 263 N.C. 260, 139 S.E.2d 667 (1965).

This section does not say defendant must sign a written waiver. *State v. McNeil*, 263 N.C. 260, 139 S.E.2d 667 (1965).

**Section Held Inapplicable to Interroga-**

**tion of Defendant Prior to Formal Charge.**—See *State v. Elam*, 263 N.C. 273, 139 S.E.2d 601 (1965).

**Trial without Counsel Held Not Error.**—Where the record shows that the trial court was careful to advise defendant of the charges against him and the permissible punishment in case of conviction, and that defendant, experienced by a number of prior prosecutions, with full understanding waived appointment of counsel, it is not error for the trial court to permit the defendant to begin trial without counsel. *State v. Bines*, 263 N.C. 48, 138 S.E.2d 797 (1964).

**Noncapital Cases Prior to 1963 Amendment.**—See *State v. Davis*, 248 N.C. 318, 103 S.E.2d 289 (1958).

**Applied in** *State v. Roux*, 263 N.C. 149, 139 S.E.2d 189 (1964); *State v. Chamberlain*, 263 N.C. 406, 139 S.E.2d 620 (1965); *State v. Wilson*, 264 N.C. 595, 142 S.E.2d 180 (1965).

**Cited in** *State v. Hackney*, 240 N.C. 230, 91 S.E.2d 778 (1954); *State v. Graves*, 251 N.C. 550, 112 S.E.2d 85 (1960); *State v. Arnold*, 258 N.C. 563, 129 S.E.2d 229 (1963); *State v. Vines*, 262 N.C. 747, 138 S.E.2d 630 (1964); *Anderson v. North Carolina*, 221 F. Supp. 930 (W.D.N.C. 1963).

**§ 15-5. Fees allowed counsel assigned to indigent defendant.**—Whenever an attorney is appointed by the court to defend an indigent defendant, he shall receive a fee for performing such service to be fixed by the court which shall be reasonable and commensurate with the time consumed, the nature of the case, the amount of fees usually charged for such cases in the county or locality. The fee so allowed shall be entered as a judgment against the defendant, signed by the court, and docketed in the judgment docket in the office of the clerk of the superior court and shall constitute a lien as provided by the general law of the State pertaining to judgments. Any funds collected by reason of said judgment shall be deposited in the State Treasury. All costs necessary for the administration of this section shall be paid by the State of North Carolina except regular and ordinary court costs which shall be paid by the county as now provided by law. (1917, c. 247; C. S., s. 4516; 1937, c. 226; 1963, c. 1080, s. 2.)

**Local Modification.**—Craven: 1955, c. 349; Franklin: 1941, c. 211.

**Editor's Note.**—The 1963 amendment rewrote this section.

**Counsel in Capital Cases Mandatory.**—This section indicates that in capital felonies the provisions of § 11, Article I of the

Constitution and § 15-4 relative to counsel are regarded as not merely permissive but mandatory. *State v. Hedgebeth*, 228 N.C. 259, 45 S.E.2d 563 (1947).

**Applied in** *State v. Roux*, 263 N.C. 149, 139 S.E.2d 189 (1964).

**§ 15-5.1. Rules and regulations of State Bar Council relating to counsel for indigent defendants.**—The North Carolina State Bar Council shall have authority to make rules and regulations for the implementation of §§ 15-4.1 to 15-5.3 relating to the manner and method of assigning counsel, the practice of the courts with respect to determination of indigency, the waiver of counsel and related matters, the adoption and approval of plans by any dis-

strict bar regarding the method of assignment of counsel among the licensed attorneys of said district and such other matters as shall provide for the protection of the constitutional rights of all indigent persons charged with crime and the reasonable allocation of responsibility for the defense of indigent defendants among the licensed attorneys of this State: Provided, however, that no such rules and regulations shall become effective until certified to and approved by the Supreme Court of North Carolina. (1963, c. 1080, s. 3.)

**Cross Reference.**—For rules and regulations issued pursuant to this section, see Volume 4A, Appendix VI-A.

**§ 15-5.2. Additional costs in criminal cases to assist in appropriations required to provide counsel for indigent defendants.** — In all criminal cases in the superior courts of this State there shall be taxed against the defendant the sum of four dollars (\$4.00) to be paid into the State treasury for the purpose of assisting in the appropriation required under Session Laws 1963, chapter 1080 and a sum of one dollar (\$1.00) to be taxed against each defendant as aforesaid to be paid into the general fund of the county wherein the case is tried to assist counties with the appropriations that will be required as the result of Session Laws 1963, chapter 1080. (1963, c. 1080, s. 4.)

**§ 15-5.3. False affirmation in regard to question of indigence.** — Any defendant making a false affirmation in regard to the question of indigence under §§ 15-4.1 to 15-5.3 shall be guilty of perjury and punished as provided in G.S. 14-209. (1963, c. 1080, s. 4.)

**§ 15-6. Imprisonment to be in county jail.** — No person shall be imprisoned by any judge, court, justice of the peace, or other peace officer except in the common jail of the county, unless otherwise provided by law: Provided, that whenever the sheriff of any county shall be imprisoned, he may be imprisoned in the jail of any adjoining county. (1797, c. 474, s. 3, P. R.; R. C., c. 35, s. 6; 1879, c. 12; Code, s. 1174; Rev., s. 3151; C. S., s. 4517.)

**Cited in** *State v. Stephenson*, 247 N.C. 231, 100 S.E.2d 327 (1957).

**§ 15-6.1. Changing place of confinement of prisoner committing offense.**—In all cases where a defendant has been convicted in a court inferior to the superior court and sentenced to a term in the county jail or to serve in some county institution other than under the supervision of the State Highway Commission, and such defendant is subsequently brought before such court for an offense committed prior to the expiration of the term to be served in such county institution, upon conviction, plea of guilty or nolo contendere, the judge shall have the power and authority to change the place of confinement of the prisoner and commit such defendant to work under the supervision of the State Highway Commission. This provision shall apply whether or not the terms of the new sentence are to run concurrently with or consecutive to the remaining portion of the old sentence. (1953, c. 778; 1957, c. 65, s. 11.)

**§ 15-6.2. Concurrent sentences for offenses of different grades or to be served in different places.**—When by a judgment of a court or by operation of law a prison sentence runs concurrently with any other sentence a prisoner shall not be required to serve any additional time in prison solely because the concurrent sentences are for different grades of offenses or that it is required that they be served in different places of confinement. (1955, c. 57.)

**Editor's Note.** — For comment on this section, see 35 N.C.L. Rev. 112 (1956).

**§ 15-7. Post-mortem examinations directed.**—In all cases of homicide, any officer prosecuting for the State may, at any time, direct a post-mortem ex-

amination of the deceased to be made by one or more physicians to be summoned for the purpose; and the physicians shall be paid a reasonable compensation for such examination, the amount to be determined by the court and taxed in the costs, and if not collected out of the defendant the same shall be paid by the county. (R. C., c. 35, s. 49; Code, s. 1214; Rev., s. 3152; C. S., s. 4518.)

**Cross Reference.**—See also § 90-217.

**Section Valid.**—This section is a valid exercise of the police power of the State. *Withers v. Board*, 163 N.C. 341, 79 S.E. 615 (1913).

**Left to Discretion of Trial Judge.**—The board of commissioners of the county are not parties to a proceeding under this section, nor are they entitled to any notice before such orders are made. The matter is left to the sound discretion of the trial judge, and unless such discretion is grossly abused, the Supreme Court will not inter-

fere. *Withers v. Board*, 163 N.C. 341, 79 S.E. 615 (1913).

**Coroner and physicians performing autopsy may be held liable by father of deceased for wrongful mutilation** when the autopsy is ordered by the coroner on his own initiative solely to ascertain the cause of death without suspicion of foul play, since in such case the coroner is without authority to order the autopsy, and his direction therefor can confer no immunity upon the physicians. *Gurganious v. Simpson*, 213 N.C. 613, 197 S.E. 163 (1938).

**§ 15-8. Stolen property returned to owner.** — Upon the conviction of any person for robbing or stealing any money, goods, chattels, or other estate of any description whatever, the person from whom such goods, money, chattels or other estate were robbed or stolen shall be entitled to restitution thereof; and the court may award restitution of the articles so robbed or stolen, and make all such orders and issue such writs of restitution or otherwise as may be necessary for that purpose. (21 Hen. VIII, c. 11; R. C., c. 35, s. 34; Code, s. 1201; Rev., s. 3153; C. S., s. 4519; 1943, c. 543.)

**§ 15-9. Magistrate may associate another with him.** — Any magistrate, to whom any complaint may be made, or before whom any prisoner may be brought, as by law provided, may associate with himself any other magistrate of the same county; and the powers and duties herein mentioned may be executed by the two magistrates so associated. (1868-9, c. 178, subc. 3, s. 28; Code, s. 1159; Rev., s. 3154; C. S., s. 4520.)

**Section Constitutional.**—This section is in harmony with the provision of the Constitution, Art. IV, § 12, conferring power

upon the General Assembly to allot and distribute judicial powers. *State v. Flowers*, 109 N.C. 841, 13 S.E. 718 (1891).

**§ 15-10. Speedy trial or discharge on commitment for felony.** — When any person who has been committed for treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer in open court to be brought to his trial, shall not be indicted some time in the next term of the superior or criminal court ensuing such commitment, the judge of the court, upon notice in open court on the last day of the term, shall set at liberty such prisoner upon bail, unless it appear upon oath that the witnesses for the State could not be produced at the same term; and if such prisoner, upon his prayer as aforesaid, shall not be indicted and tried at the second term of the court, he shall be discharged from his imprisonment: Provided, the judge presiding may, in his discretion, refuse to discharge such person if the time between the first and second terms of the court be less than four months. (1868-9, c. 116, s. 33; Code, s. 1658; Rev., s. 3155; 1913, c. 2; C. S., s. 4521.)

**Requirements Peremptory.**—This section is peremptory in its requirements; and where one so committed has formally complied with the provisions of the statute, it is the duty of the court to discharge the prisoner. *State v. Webb*, 155 N.C. 426, 70 S.E. 1064 (1911).

**Remedy Is By Certiorari.**—A certiorari is the proper procedure to review the order

of the lower court in refusing to discharge a prisoner from custody under the provisions of this section. *State v. Webb*, 155 N.C. 426, 70 S.E. 1064 (1911).

**This section is for the protection of persons held without bail.** *State v. Lowry*, 263 N.C. 536, 139 S.E.2d 870 (1965).

**It requires simply that under certain circumstances the prisoner be discharged from**



custody. *State v. Patton*, 260 N.C. 359, 132 S.E.2d 891 (1963); *State v. Lowry*, 263 N.C. 536, 139 S.E.2d 870 (1965).

And not that he go quit of further prose-

cution. *State v. Patton*, 260 N.C. 359, 132 S.E.2d 891 (1963); *State v. Lowry*, 263 N.C. 536, 139 S.E.2d 870 (1965).

**§ 15-10.1. Detainer; purpose; manner of use.**—Any person confined in the State prison of North Carolina, subject to the authority and control of the State Prison Department, or any person confined in any other prison of North Carolina, may be held to account for any other charge pending against him only upon a written order from the clerk or judge of the court in which the charge originated upon a case regularly docketed, directing that such person be held to answer the charge pending in such court; and in no event shall the prison authorities hold any person to answer any charge upon a warrant or notice when the charge has not been regularly docketed in the court in which the warrant or charge has been issued: Provided, that this section shall not apply to any State agency exercising supervision over such person or prisoner by virtue of a judgment, order of court or statutory authority. (1949, c. 303; 1953, c. 603; 1957, c. 349, s. 10.)

**§ 15-10.2. Mandatory disposition of detainers—Request for final disposition of charges; continuance; information to be furnished prisoner.**—(a) Any prisoner serving a sentence or sentences within the State prison system who, during his term of imprisonment, shall have lodged against him a detainer to answer to any criminal charge pending against him in any court within the State, shall be brought to trial within eight (8) months after he shall have caused to be sent to the solicitor of the court in which said criminal charge is pending, by registered mail, written notice of his place of confinement and request for a final disposition of the criminal charge against him; said request shall be accompanied by a certificate from the Director of Prisons stating the term of the sentence or sentences under which the prisoner is being held, the date he was received, and the time remaining to be served; provided that, for good cause shown in open court, the prisoner or his counsel being present, the court may grant any necessary and reasonable continuance.

(b) The Director of Prisons shall, upon request by the prisoner, inform the prisoner in writing of the source and contents of any charge for which a detainer shall have been lodged against such prisoner as shown by said detainer, and furnished the prisoner with the certificate referred to in subsection (a). (1957, c. 1067, s. 1.)

**§ 15-10.3. Same—Procedure; return of prisoner after trial.**—The solicitor, upon receipt of the written notice and request for a final disposition as hereinbefore specified, shall make application to the court in which said charge is pending for a writ of habeas corpus ad prosequendum and the court upon such application shall issue such writ to the Director of Prisons requiring the prisoner to be delivered to said court to answer the pending charge and to stand trial on said charge within the time hereinbefore provided; upon completion of said trial, the prisoner shall be returned to the State prison system to complete service of the sentence or sentences under which he was held at the time said writ was issued. (1957, c. 1067, s. 2.)

**§ 15-10.4. Same—Exception as to prisoners who are mentally ill.**—The provisions of §§ 15-10.2 and 15-10.3 shall not apply to any prisoner who has been transferred and assigned for observation or treatment to any unit of the prison system which is maintained for those prisoners who are mentally ill or are suffering from mental disorders. (1957, c. 1067, s. 3.)

## ARTICLE 2.

*Record and Disposition of Seized, etc., Articles.*

§ 15-11. **Sheriffs, etc., to maintain register of personal property confiscated, seized or found.**—Each sheriff, police department and constable in this State is hereby required to keep and maintain a book or register, and it shall be the duty of each sheriff, police department and constable to keep a record therein of all articles of personal property which may be seized or confiscated by him or it, or of which he or it may have become possessed in any way in the discharge of his duty. Said sheriffs, police departments and constables shall cause to be kept in said registers a description of such property, the name of the person from whom it was seized, if such name be known, the date and place of its seizure, and, where the article was not taken from the person of a suspect or prisoner, a brief recital of the place and circumstances concerning the possession thereof by such sheriff, police department, or constable. Such sheriff, police department and constable shall also keep in said register appropriate entries showing the manner, date, and to whom said articles are disposed of or delivered, and, if sold as hereinafter provided, a record showing the disposition of the proceeds arising from such sale. (1939, c. 195, s. 1.)

§ 15-12. **Publication of notice of unclaimed property; advertisement and sale of unclaimed bicycles.**—Unless otherwise provided herein, whenever such articles in the possession of any sheriff, police department or constable have remained unclaimed by the person who may be entitled thereto for a period of one hundred eighty (180) days after such seizure, confiscation, or receipt thereof in any other manner, by such sheriff, police department or constable, the said sheriff, police department or constable in whose possession said articles are may cause to be published one time in some newspaper published in said county a notice to the effect that such articles are in the custody of such officer or department, and requiring all persons who may have or claim any interest therein to make and establish such claim or interest not later than thirty (30) days from the date of the publication of such notice or in default thereof, such articles will be sold and disposed of. Such notice shall contain a brief description of the said articles and such other information as the said officer or department may consider necessary or advisable to reasonably inform the public as to the kind and nature of the article about which the notice relates. Provided, however, when bicycles which are in the possession of any sheriff, police department or constable, as provided for in this article, have remained unclaimed by the person who may be entitled thereto for a period of thirty days after such seizure, confiscation or receipt thereof, the said sheriff, police department or constable who has possession of any such bicycle may proceed to advertise and sell such bicycles as provided by this article. (1939, c. 195, s. 2; 1965, c. 807, s. 1.)

**Editor's Note.** — The 1965 amendment Cleveland, Columbus, Gaston, Haywood, Henderson, Hoke, Mitchell, Moore, the amendatory act provides: "This act Northampton, Pender, Scotland, Wilson shall not apply to Alamance, Cherokee, counties."

§ 15-13. **Public sale thirty days after publication of notice.**—If said articles shall remain unclaimed or satisfactory evidence of ownership thereof not be presented to the sheriff, police department or constable, as the case may be, for a period of thirty (30) days after the publication of the notice provided for in § 15-12, then the said sheriff, police department, or constable in whose custody such articles may be, is hereby authorized and empowered to sell the same at public auction for cash to the highest bidder, either at the courthouse door of the county, or at the police headquarters of the municipality in which the said articles of property are located, and at such sale to deliver the same to the purchaser or purchasers thereof. (1939, c. 195, s. 3.)



**§ 15-14. Notice of sale.**—Before any sale of said property is made under the provisions of this article, however, the said sheriff, police department, or constable making the same shall first advertise the sale by publishing a notice thereof in some newspaper published in the said county at least one time not less than ten days prior to the date of sale, and by posting a notice of the sale at the courthouse door and at three other public places in the said county. Said notice shall specify the time and place of sale, and contain a sufficient description of the articles of property to be sold. It shall not be required that the sale lay open for increase bids or objections, but it may be deemed closed when the purchaser at the sale pays the amount of the accepted bid. (1939, c. 195, s. 4.)

**§ 15-15. Disbursement of proceeds of sale.** — From the proceeds realized from the sale of said property, the sheriff, police department, constable or other officer making the same shall first pay the costs and expenses of the sale, and all other necessary expenses incident to a compliance with this article, and any balance then remaining from the proceeds of said sale shall be paid within thirty days after the sale to the treasurer of the county board of education of the county in which such sale is made, for the benefit of the fund for maintaining the free public schools of such county. (1939, c. 195, s. 5.)

**§ 15-16. Nonliability of officers.** — No sheriff, police department, constable, or other officer, shall be liable for any damages or claims on account of any such sale or disposition of such property, as provided in this article. (1939, c. 195, s. 6.)

**§ 15-17. Construction of article.**—This article shall not be construed to apply to the seizure and disposition of whiskey distilleries, game birds, and other property or articles which have been or may be seized, where the existing law now provides the method, manner, and extent of the disposition of such articles or of the proceeds derived from the sale thereof. (1939, c. 195, s. 7.)

**Cross References.**—As to the disposition of liquor seized, see § 18-13. As to disposition of seized distilleries, see § 18-22.

### ARTICLE 3.

#### *Warrants.*

**§ 15-18. Who may issue warrant.** — The following persons respectively have power to issue process for the apprehension of persons charged with any offense, and to execute the powers and duties conferred in this chapter, namely: The Chief Justice and the associate justices of the Supreme Court, the judges of the superior court, judges of criminal courts, presiding officers of inferior courts, justices of the peace, mayors of cities, or other chief officers of incorporated towns. (1868-9, c. 178, subc. 3, s. 1; Code, s. 1132; Rev., s. 3156; C. S., s. 4522.)

**Local Modification.** — City of Concord; 1945, c. 82; City of Durham; 1963, c. 1200.

**Cross References.** — As to issuance of warrants and receipts by justices of the peace, see § 7-134.1 et seq. As to coroner's power to issue warrants, see § 152-7, subdivision (4). As to warrant of arrest in cases of extradition, see § 15-61.

**Mayor Pro Tem. May Issue.** — The power conferred upon a mayor pro tem. "to exercise the duties" of mayor during his absence includes that of issuing warrants in criminal actions. *State v. Thomas*, 141 N.C. 791, 53 S.E. 522 (1906).

**Warrant Must Be Signed by Judicial Officer.**—Police officers were without authority to arrest defendant where the warrant was signed by a police officer, since the warrant must be signed by a judicial officer. *State v. McGowan*, 243 N.C. 431, 90 S.E.2d 703 (1956).

**This section does not confer upon police sergeants the power to issue warrants.** *State v. Blackwell*, 246 N.C. 642, 99 S.E.2d 867 (1957).

**Issuance of Warrants by Solicitors.**—See *State v. Furrage*, 250 N.C. 616, 109 S.E.2d 563 (1959), holding a public-local

law authorizing solicitors to issue warrants of arrest does not conflict with the provisions of N.C. Const., Art. I, § 8 as to separation of powers.

Applied in *State v. Bennett*, 237 N.C.

749, 76 S.E.2d 42 (1953); *State v. Dough-tie*, 238 N.C. 228, 77 S.E.2d 642 (1953).

Stated in *State v. McHone*, 243 N.C. 231, 90 S.E.2d 536 (1955).

**§ 15-19. Complainant examined on oath.**—Whenever complaint is made to any such magistrate that a criminal offense has been committed within this State, or without this State and within the United States, and that a person charged therewith is in this State, it shall be the duty of such magistrate to examine on oath the complainant and any witnesses who may be produced by him. (1868-9, c. 178, subc. 3, s. 2; Code, s. 1133; Rev., s. 3157; C. S., s. 4523.)

**This section vests discretionary power in officials authorized to issue warrants.** *State v. Frumage*, 250 N.C. 616, 109 S.E.2d 563 (1959).

**Oath Essential.**—This section requires the justice, before issuing a warrant to examine the complainant on oath. *Merrimon v. Commissioners*, 106 N.C. 369, 11 S.E. 267 (1890).

**Examination Must Show Commission of Offense.**—It must appear by this examination that an offense has been committed before any warrant is issued. *State v. Moore*, 136 N.C. 581, 48 S.E. 573 (1904).

**Sufficiency of Evidence.**—It is the duty of a magistrate, before issuing a warrant on a criminal charge, except in cases super visum, to require evidence on oath amounting to a direct charge or creating a strong suspicion of guilt. *Welch v. Scott*, 27 N.C. 72 (1844).

**Complaint Need Not Be Written.**—In *State v. Bryson*, 84 N.C. 780 (1881), *Ashe, J.*, in construing the provisions of the act which is now embodied in this and the next section says that no written affidavit

or complaint is required. *State v. Peters*, 107 N.C. 876, 12 S.E. 74 (1890).

**Same—No Special Form Required.**—It is not expected nor required, in the absence of special provision to the contrary, that an affidavit or complaint should be in any particular form, or should charge the crime with the fullness or particularity necessary in an information or indictment, 12 Cyc., 294. *State v. Gupton*, 166 N.C. 257, 80 S.E. 989 (1914).

**Appellate Court Cannot Look Behind Warrant.**—The appellate court “can only look at the warrant, which is the complaint,” and “cannot look behind the warrant for objections lying in the defects or irregularities of the preliminary evidence.” *State v. Peters*, 107 N.C. 876, 12 S.E. 74 (1890). See *State v. Bryson*, 84 N.C. 780 (1881).

Stated in *Carson v. Doggett*, 231 N.C. 629, 53 S.E.2d 609 (1950).

Cited in *State v. McHone*, 243 N.C. 231, 90 S.E.2d 536 (1955); *State v. McGowan*, 243 N.C. 431, 90 S.E.2d 703 (1956).

**§ 15-20. Warrant issued; contents; summons instead of warrant in misdemeanor cases.**—If it shall appear from such examination that any criminal offense has been committed, the magistrate shall issue a proper warrant under his hand, with or without seal, reciting the accusation, and commanding the officer to whom it is directed forthwith to take the person accused of having committed the offense, and bring him before a magistrate, to be dealt with according to law. A justice of the peace or a chief officer of a city or town shall direct his warrant to the sheriff or other lawful officer of his county.

In all cases of misdemeanors any officer authorized by law to issue warrants in criminal actions may issue a summons instead of a warrant of arrest when he has reasonable ground to believe that the person accused will appear in response to the same. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate, or some officer having the jurisdiction of a magistrate, at a stated time and place. If any person summoned fail, without good cause, to appear as commanded by the summons, he may be punished by a fine of not more than twenty-five dollars (\$25.00). Upon such failure to appear the said officer shall issue a warrant of arrest. If after issuing a summons the said officer becomes satisfied that the person summoned will not appear as commanded by the summons he may at once issue a warrant of arrest. In all proceedings held pursuant to said summons the hearing and trial shall be upon the summons in the same manner and with the same effect as if

the hearing and trial were on a warrant. (1868-9, c. 178, subc. 3, s. 3; Code, s. 1134; 1901, c. 668; Rev., s. 3158; C. S., s. 4524; 1955, c. 332.)

**Editor's Note.** — For article discussing requisites of warrant, see 15 N.C.L. Rev. 101.

**General Consideration.**—It is not necessary that a warrant for assault should charge that it was issued upon a sworn complaint. *State v. Price*, 111 N.C. 703, 16 S.E. 414 (1892). The facts constituting the offense must be set out with certainty. *State v. Jones*, 88 N.C. 671 (1883). But the warrant may refer to the affidavit, *State v. Yellowday*, 152 N.C. 793, 67 S.E. 480 (1910), as they will be construed together. *State v. Gupton*, 166 N.C. 257, 80 S.E. 989 (1914).

Appearance waives a defect in a warrant. *State v. Cole*, 150 N.C. 805, 63 S.E. 958 (1909). A warrant need not negative an exception in a statute. *State v. Moore*, 166 N.C. 284, 81 S.E. 294 (1914).

**Amendment of Warrant.**—On appeal to the superior court from a conviction before a justice of the peace, the court can allow an amendment of the warrant. *State v. Carble*, 70 N.C. 62 (1874); *State v. Koonce*, 108 N.C. 752, 12 S.E. 1032 (1891). It is discretionary with the court whether it will exercise the power. *State v. Vaughan*, 91 N.C. 532 (1884); *State v. Crook*, 91 N.C. 536 (1884). But a warrant cannot be amended so as to charge a different offense. *State v. Cook*, 61 N.C. 535 (1868); *State v. Vaughan*, 91 N.C. 532 (1884); *State v. Taylor*, 118 N.C. 1262, 24 S.E. 526 (1896).

An order directing an amendment to a warrant by the insertion therein of certain words is self-executing, and the words need

not be actually inserted in the complaint or warrant. *State v. Yellowday*, 152 N.C. 793, 67 S.E. 480 (1910). See also *State v. Winslow*, 95 N.C. 649 (1886); *State v. Davis*, 111 N.C. 729, 16 S.E. 540 (1892); *State v. Sharp*, 125 N.C. 628, 34 S.E. 264 (1899); *State v. Yoder*, 132 N.C. 1111, 44 S.E. 689 (1903).

**This section vests discretionary power in officials authorized to issue warrants.** *State v. Furmage*, 250 N.C. 616, 109 S.E.2d 563 (1959).

**Justice of Peace, Who Is Also a Police Officer, May Issue Warrant.**—A justice of the peace, who is also an officer on the police force of a town, may lawfully as justice of the peace take the oath of another police officer to an affidavit on which a criminal warrant is to be issued, and then as justice of the peace may lawfully issue a warrant thereon, addressed to the chief of police or any other lawful officer of the town or county, returnable for trial before the judge of the recorder's court of the town, who tries the case. *State v. McHone*, 243 N.C. 231, 90 S.E.2d 536 (1955).

**Identification of Accused.**—A warrant must sufficiently identify the person accused. *Carson v. Doggett*, 231 N.C. 629, 58 S.E.2d 609 (1950).

**Officer Protected When Warrant Defective.**—See *State v. Jones*, 88 N.C. 671 (1883); *State v. Gupton*, 166 N.C. 257, 80 S.E. 989 (1914); *Alexander v. Lindsey*, 230 N.C. 663, 55 S.E.2d 470 (1949).

**Cited in** *State v. Johnson*, 247 N.C. 240, 100 S.E.2d 494 (1957).

**§ 15-21. Where warrant may be executed; noting day of delivery to officer; copy to each defendant.**—Warrants issued by any justice of the Supreme Court, or by any judge of the superior court, or of a criminal court, may be executed in any part of this State; warrants issued by a justice of the peace, or by the chief officer of any city or incorporated town, may be executed in any part of the county of such justice, or in which such city or town is situated, and on any river, bay or sound forming the boundary between that and some other county, and not elsewhere, unless indorsed as prescribed in § 15-22.

The officer to whom the warrant is addressed shall note on it the day of its delivery to him and deliver a copy thereof to each of the defendants. A failure to comply shall not invalidate the arrest. (1868-9, c. 178, subc. 3, s. 4; Code, s. 1135; Rev., s. 3159; C. S., s. 4525; 1957, c. 346.)

**Local Modification.**—City court of Raleigh: 1959, c. 837.

**Cross Reference.**—For statute affecting this section as to warrants issued by a jus-

tice of the peace or by the chief officer of a city or town, see § 15-22 as amended by Session Laws 1949, c. 168.

**§ 15-22. Warrant indorsed or certified and served in another county.**—If the person against whom any warrant is issued by a justice of the peace or chief officer of a city or town shall escape, or be in any other county out of



the jurisdiction of such justice or chief officer, it shall be the duty of any justice of the peace, or any other magistrate within the county where such offender shall be, or shall be suspected to be, upon proof of the handwriting of the magistrate or chief officer issuing the warrant, to indorse his name on the same, and thereupon the person, or officer to whom the warrant was directed, may arrest the offender in that county: Provided, that an officer to whom a warrant charging the commission of a felony is directed, who is in the actual pursuit of a person known to him to be the one charged with the felony, may continue the pursuit without such indorsement. The justice of the peace or a chief officer of a city or town shall direct his warrant to the sheriff or other lawful officer of his county, and such warrant when so indorsed as herein prescribed shall authorize and compel the sheriff or other officer of any county in the State, in which such indorsement is made, to execute the same. Whenever a justice of the peace or the chief officer of a city or town shall attach to his warrant a certificate under the hand and seal of the clerk of the superior court of his county certifying that he is a justice of the peace of the county or the chief officer of a city or town in the county and that the warrant bears his genuine signature, the warrant may be executed in any part of the State in like manner as warrants issued by justices of the Supreme Court, judges of the superior court, or judges of criminal courts without any indorsement of any justice of the peace or magistrate of the county in which it may be served. (1868-9, c. 178, subc. 3, s. 5; Code, s. 1136; 1901, c. 668; Rev., s. 3160; 1917, c. 30; C. S., s. 4526; 1949, c. 168.)

**Editor's Note.**—See 27 N.C.L. Rev. 451, for comment on 1949 amendment.

**Restricted to Criminal Cases.**—The provision of this section is restricted to criminal cases. *Fisher v. Bullard*, 109 N.C. 574, 13 S.E. 799 (1891).

**Indorsement of Justice in County of Service.**—Before the 1949 amendment to this section, a warrant issued in one county

to be served in another was not given extraterritorial efficacy unless it had the endorsement of a justice of the peace or other authorized officer in the latter county. *Stancill v. Underwood*, 188 N.C. 475, 124 S.E. 845 (1924).

**Cited in** *State v. Honeycutt*, 237 N.C. 595, 75 S.E.2d 525 (1953).

**§ 15-23. Magistrate not liable for indorsing warrant.** — No magistrate shall be liable to any indictment, action for trespass or other action for having indorsed any warrant pursuant to the provisions of § 15-22, although it should afterwards appear that such warrant was illegally or improperly issued. (1868-9, c. 178, subc. 3, s. 6; Code, s. 1137; Rev., s. 3161; C. S., s. 4527.)

**Endorsing Officer Fully Protected.**—If a warrant issues from competent authority and the extraterritorial efficacy provided by § 15-22 is imparted to it in the county wherein the accused party was arrested,

the justification is full to the officer and all who co-operated with him, and no inquiry is admissible into the circumstances under which it was issued. *State v. James*, 80 N.C. 370 (1879).

**§ 15-24. Before what magistrate a warrant returned.** — Persons arrested under any warrant issued for any offense where no provision is otherwise made, shall be brought before the magistrate who issued the warrant; or, if he be absent or from any cause unable to try the case, before the nearest magistrate in the same county; provided, however, that a magistrate may make such warrant returnable before any other magistrate or any court inferior to the superior court having jurisdiction within the same county, and the warrant by virtue of which the arrest shall have been made with a proper return endorsed thereon and signed by the officer or person making the arrest shall be delivered to such magistrate or to the court within the same county as may be directed in the warrant. (1868-9, c. 178, subc. 3, s. 12; Code, s. 1143; Rev., s. 3162; C. S., s. 4528; 1953, c. 141, s. 1.)

**Editor's Note.** — For comment on 1953 amendment, see 31 N.C.L. Rev. 406 (1953).

returnable before a mayor pro tem. *State v. Thomas*, 141 N.C. 791, 53 S.E. 522 (1906).

**Mayor Pro Tem.** — A warrant may be

**Authority of Magistrate Issuing War-**

**warrant.**—The magistrate who issues the warrant has the authority to make the warrant returnable before himself or before some officer having like jurisdiction, such a recorder to conduct the preliminary hearing.

*State v. Lord*, 145 N.C. 479, 59 S.E. 656 (1907).

**Cited in** *State v. James*, 78 N.C. 455 (1878); *State v. McHone*, 243 N.C. 231, 90 S.E.2d 536 (1955).

**§ 15-24.1. Amendment of warrant to show ownership of property.**—Any criminal warrant may be amended in the superior court, before or during the trial, when there shall appear to be any variance between the allegations in the warrant and the evidence in setting forth the ownership of property if, in the opinion of the court, such amendment will not prejudice the defendant. This section shall be construed as enlarging and not limiting the conditions and situations under which a warrant may be amended. (1965, c. 285.)

#### ARTICLE 4.

##### *Search Warrants.*

**§ 15-25. In what cases issued, and where executed.**—If any credible witness shall prove, upon oath, before any justice of the peace, or mayor of any city, or chief magistrate of any incorporated town, or the clerk of any court inferior to the superior court, that there is a reasonable cause to suspect that any person has in his possession, or on his premises, any narcotic drugs as defined in article 5 of chapter 90 of the General Statutes, any property stolen, or any and all personal property and all tickets, books, papers and documents used in connection with and operation of lotteries or any gaming or gambling, or any false or counterfeit coin resembling, or apparently intended to resemble, or pass for, any current coin of the United States, or of any other state, province or country, or any instrument, tool or engine whatsoever, adapted or intended for the counterfeiting of any such coin; or any false and counterfeit notes, bills or bonds of the United States, or of the State of North Carolina, or of any other state or country, or of any county, city or incorporated town; or any instrument, tool or engine whatsoever, adapted or intended for the counterfeiting of such note, bill or bond, it shall be lawful for such justice, mayor or chief magistrate of any incorporated town to grant a warrant, to be executed within the limits of his county or of the county in which such city or incorporated town is situated, and for the clerk of any court inferior to the superior court to grant a warrant, to be executed within the territorial jurisdiction of such court, all such warrants to be directed to any proper officer, authorizing him to search for such property, and to seize the same, and to arrest the person having in possession or on whose premises may be found such narcotic drugs, stolen property, or any and all personal property and all tickets, books, papers and documents used in connection with and operation of lotteries or any gaming or gambling, counterfeit coin, counterfeit notes, bills or bonds, or the instruments, tools or engines for making the same, and to bring them before any magistrate of competent jurisdiction, to be dealt with according to law. (1868-9, c. 178, subc. 3, s. 38; Code, s. 1171; Rev., s. 3163; C. S., s. 4529; 1941, c. 53; 1949, c. 1179; 1955, c. 7.)

**Cross Reference.** — As to warrant authorizing search for liquor, see § 18-13.

**Editor's Note.**—For note as to the possible extension of this section to include issuance of search warrants to search for property used in the commission of a felony, see 32 N.C.L. Rev. 114 (1953).

**At Common Law.**—Warrants to search for stolen goods are authorized by the principles of the common law. *State v. McDonald*, 14 N.C. 468 (1832).

**Ordinarily officers of the law may not**

**invade one's home except under authority of a search warrant** issued in accord with pertinent statutory provisions. In re *Walters*, 229 N.C. 111, 47 S.E.2d 709 (1948).

Respondent refused to permit officers to enter his home for the purpose of serving civil process on a third person. There was no evidence that the person sought was actually in respondent's home at the time. It was held that respondent was within his rights in refusing admittance to the officers, and his act in so doing cannot be held



for contempt of court on the ground that it tended to obstruct or embarrass the administration of justice. In re Walters, 229 N.C. 111, 47 S.E.2d 709 (1948).

Stated in State v. Mock, 259 N.C. 501, 130 S.E.2d 863 (1963).

**§ 15-25.1. Search warrants for barbiturate and stimulant drugs.—**

(a) A search warrant authorizing an officer to search a person or place for barbiturate drugs or stimulant drugs may be issued by any judge of any court of record, any clerk or assistant clerk of any court of record, or any justice of the peace under the conditions set forth in this section. When such warrant is issued by a judge or clerk or assistant clerk of the superior court or a justice of the peace, it may be executed anywhere in the county in which it is issued. When such warrant is issued by a judge or clerk or assistant clerk of any court inferior to the superior court, it may be executed only within the territorial jurisdiction of such inferior court. Such warrant shall be directed to any proper peace officer and shall authorize him to search for such barbiturate or stimulant drugs, to seize the same, and to make return thereof to any court of competent jurisdiction, to be dealt with according to law.

Such warrant shall be issued only if it is established that there is a reason to suspect that some person has in his possession any barbiturate or stimulant drugs for sale, disposition or other purpose, such sale, disposition or other purpose being unlawful.

A warrant shall issue only on affidavit sworn to before a judge or a clerk or assistant clerk of a court of record or a justice of the peace, establishing the grounds for issuing the warrant. If such judge, justice of the peace, or clerk or assistant clerk is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the drugs and naming or describing the person or place to be searched. The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified. No warrant shall be issued in any case upon an affidavit stating nothing more than "information and belief."

(b) The term "barbiturate drug" means:

- (1) Barbituric acid, the salts and derivatives of barbituric acid, or compounds, preparations or mixtures thereof; and
- (2) Drugs, compounds, preparations or mixtures which have a hypnotic or somnifacient effect on the body of a human or animal, to be found by the State Board of Pharmacy and duly promulgated by rule or regulation; except that the term "barbiturate drug" shall not include any drug the manufacture or delivery of which is regulated by the narcotic drug laws of this State; provided, however, that the term "barbiturate drug" shall not include compounds, mixtures, or preparations containing barbituric acid, salts or derivatives of barbituric acid, when such compounds, mixtures, or preparations contain a sufficient quantity of another drug or drugs, in addition to such acid, salts or derivatives, to cause the resultant product to produce an action other than its hypnotic or somnifacient action.

(c) The term "stimulant drug" means any drug consisting of amphetamine, desoxyephedrine (methamphetamine), mephentermine, pipradol, phenmetrazine, methylphenidate, or any salt, mixture or optical isomer of any of them, which drug, salt, mixture or optical isomer has a stimulating effect on the central nervous system, but shall not include preparations containing any of the aforementioned drugs, salts, mixtures or optical isomers thereof which is compounded, mixed or prepared with another drug so as to cause the resultant product to produce an

action other than that of predominantly stimulating the central nervous system. (1955, c. 815; 1961, c. 453.)

Stated in *State v. Mock*, 259 N.C. 501, 130 S.E.2d 863 (1963).

**§ 15-25.2. Search warrants for articles used in or constituting evidence of commission of felony.**—If any credible witness shall prove, under oath, before any justice of the peace, magistrate, judge of any court of record, the clerk or assistant clerk of any court of record that there is reasonable cause to suspect that any person has in his possession, or on his premises, or in his vehicle, or other conveyance, any instrument, article or thing which has been used in the commission of, or which may constitute evidence of the commission of any felony, it shall be lawful for such justice, magistrate, judge of any court of record, clerk or assistant clerk of court of record to issue a warrant, which shall describe the person, place or vehicle to be searched and the things to be seized, to be directed to any proper peace officer authorizing him to search the person, place, vehicle, or other conveyance, for such property, to seize the same, and to make return thereof to any court of competent jurisdiction to be dealt with according to law.

When such search warrant is issued by a judge or a clerk or an assistant clerk of the superior court, by a judge or a clerk or an assistant clerk of the district court, by a judge or a clerk or an assistant clerk of any other court of record inferior to the superior court which has territorial jurisdiction of a full county, or by a justice of the peace or a magistrate, it may be executed anywhere in the county in which it is issued. When such search warrant is issued by a judge or a clerk or an assistant clerk of a court of record inferior to the superior court, and when such inferior court has, territorial jurisdiction less than a full county, it may be executed only within the territorial jurisdiction of such inferior court.

Such a search warrant shall issue only on affidavit establishing the grounds for issuing the warrant and only if such justice, judge of a court of record, clerk or assistant clerk of a court of record before whom such affidavit is made is satisfied that grounds for the application exist or that there is probable cause to believe that they exist. The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. No warrant shall be issued in any case upon an affidavit stating nothing more than "information and belief." (1965, c. 377.)

**§ 15-26. Nature and contents of warrant and procedure thereon.**—Such search warrant shall describe the article to be searched for with reasonable certainty, and by whom the complaint is made, and in whose possession the article to be searched for is supposed to be; the person issuing the warrant shall note on the face thereof, over his signature, the date and hour of the day or night when the warrant was issued and the name or names of the witnesses examined; it shall be made returnable as other criminal process is by law required to be, and the proceedings thereupon shall be as required in other cases of criminal complaint. (1868-9, c. 178, subc. 3, s. 39; Code, s. 1172; Rev., s. 3164; C. S., s. 4530; 1961, c. 1069.)

**Cross References.**—As to search warrants for deserting seamen, see § 14-351. As to constitutional prohibition against general warrants, see N.C. Const., Art. I, § 15.

**Application to Search Warrants Ob-**

**tained under § 18-13.**—The effect of § 15-27.1 was to make the requirements of this section and § 15-27 applicable to search warrants obtained under § 18-13. *State v. Mock*, 259 N.C. 501, 130 S.E.2d 863 (1963).

**§ 15-27. Warrant issued without affidavit and examination of complainant or other person; evidence discovered thereunder incompetent.**—Any officer who shall sign and issue or cause to be signed and issued a search warrant without first requiring the complainant or other person to sign an affidavit under oath and examining said person or complainant in regard thereto shall

be guilty of a misdemeanor; and no facts discovered by reason of the issuance of such illegal search warrant shall be competent as evidence in the trial of any action: Provided, no facts discovered or evidence obtained without a legal search warrant in the course of any search, made under conditions requiring the issuance of a search warrant, shall be competent as evidence in the trial of any action. (1937, c. 339, s. 1½; 1951, c. 644.)

**Editor's Note.** — For comment on this section, see 15 N.C.L. Rev. 343. For comment on 1951 amendment, see 29 N.C.L. Rev. 396. For note on search of motor vehicles without warrant, see 30 N.C.L. Rev. 421 (1952). For comment on this section since the 1951 amendment, see 32 N.C.L. Rev. 114 (1953). For note as to search of private dwelling incident to arrest outside, see 34 N.C.L. Rev. 230 (1956). For note on the requisites for a valid warrant to search for unlawfully possessed liquor, see 35 N.C.L. Rev. 424 (1957).

**The purpose of this section and § 15-27.1 was to change the law of evidence in North Carolina, and not the substantive law as to what constitutes legal or illegal search.** *State v. Coffey*, 255 N.C. 293, 121 S.E.2d 736 (1961); *State v. Stevens*, 264 N.C. 737, 142 S.E.2d 588 (1965).

**A search that was legal without a warrant before the enactment of this section is still legal, and evidence so obtained is still competent.** *State v. Coffey*, 255 N.C. 293, 121 S.E.2d 736 (1961); *State v. Stevens*, 264 N.C. 737, 142 S.E.2d 588 (1965).

**Evidence Obtained by Search without Warrant.** — Before the 1951 amendment this section did not apply to evidence obtained by search without a warrant, the language of the statute being insufficient to require this conclusion, and the statute being in derogation of the common-law rule. *State v. McGee*, 214 N.C. 184, 198 S.E. 616 (1938).

The proviso in this section has no application to pending litigation or to evidence obtained by search prior to April 9, 1951, the effective date of the 1951 amendment, which added the proviso. *State v. Jenkins*, 234 N.C. 112, 66 S.E.2d 819 (1951).

Under this section, evidence obtained by an illegal search without a search warrant is inadmissible. *State v. Smith*, 242 N.C. 297, 87 S.E.2d 593 (1955).

The admission in evidence of intoxicating liquor discovered as a result of an unlawful search of defendant's premises, is prejudicial error. *State v. Mills*, 246 N.C. 237, 98 S.E.2d 329 (1957).

**Proof of Issuance of Search Warrant.** — Where a search is made under conditions requiring the issuance of a search warrant, and it is attempted, over objection, to justify the search and seizure by the posses-

sion of a valid search warrant in the hands of the searchers, the State must produce the search warrant, or, if it has been lost, the State must prove such fact and then introduce evidence to show its contents and regularity on its face, unless the production of the warrant is waived by the accused. *State v. McMilliam*, 243 N.C. 771, 92 S.E.2d 202 (1956).

**Section Contemplates Situations Where Warrant Is Not Necessary.** — This section by its express terms contemplates situations in which a search warrant is not necessary to conduct a legal search. Such a situation is presented by the express provisions of § 18-6 where "the officer sees or has absolute personal knowledge" that there is intoxicating liquor in an automobile under investigation. *State v. Ferguson*, 238 N.C. 656, 78 S.E.2d 911 (1953), affirming denial of defendants' motion to suppress evidence obtained without a warrant.

**And Does Not Render Incompetent Evidence Obtained under Duly Issued Warrant.** — This section does not make incompetent facts discovered or evidence obtained in the course of a search authorized by a duly issued search warrant. *State v. Smith*, 251 N.C. 328, 111 S.E.2d 188 (1959).

**Application to Search Warrants Obtained under § 18-13.** — See note to § 15-26.

**Consent of Owner to Search Dispenses with Necessity of Warrant.** — A search warrant is not required to search the premises of the owner if he consents to the search. Consent to the search dispenses with the necessity of a search warrant altogether. *State v. Moore*, 240 N.C. 749, 83 S.E.2d 912 (1954).

The owner or occupant of premises, or one in charge thereof, may consent to a search of such premises, and such consent will render competent evidence thus obtained. Consent to the search dispenses with the necessity of a search warrant altogether. *State v. Moore*, 240 N.C. 749, 83 S.E.2d 912 (1954); *State v. Hamilton*, 264 N.C. 277, 141 S.E.2d 506 (1965).

**An affidavit for a search warrant signed by the chief of police is sufficient compliance with this section, since if the chief of police is not the informant he is "some other person," and the statute does not require that the informant should make the**



affidavit, or that the person signing the affidavit should state therein who his informant is, and evidence obtained on a search warrant issued on such affidavit is competent. *State v. Cradle*, 213 N.C. 217, 195 S.E. 392 (1938).

**Officer Need Not Make the Affidavit.**—It is not required that the officer using a search warrant make the affidavit. *State v. Shermer*, 216 N.C. 719, 6 S.E.2d 529 (1940).

**The warrant need not aver that an examination of the complainant was had, and what it revealed.** Nothing else appearing, there is a presumption that the requirements of this section have been preserved. *State v. Gross*, 230 N.C. 734, 55 S.E.2d 517 (1949).

Where the warrant and supporting affidavit are set out in the record and it appears that they comply with the requirements of this section and § 18-13, it is presumed that the issuing officer properly examined the complainant and otherwise observed the requirements of the section. *State v. Rhodes*, 233 N.C. 453, 64 S.E.2d 287 (1951).

**Where a warrant was signed by complainant in the name of a deputy sheriff and contained the statement that it was made on oath, the warrant was held to be valid.** *State v. Gross*, 230 N.C. 734, 55 S.E.2d 517 (1949).

**Absence of Required Affidavit.**—Where there was no affidavit in the record to support the issuance of a search warrant, and it did not appear that the complainant signed an affidavit under oath, the search warrant was not issued in accordance with this section, and the evidence discovered by reason thereof was not admissible. This is true notwithstanding the complainant testified he was sworn by the justice of the peace in whose name the warrant was issued, and that he stated to him under oath his information and the location of the premises. *State v. White*, 244 N.C. 73, 92 S.E.2d 404 (1956).

**Affidavit Based on Information.**—Where the search warrant in question was issued upon the sworn affidavit of a police officer which stated that the basis of the oath was "information," the affidavit does not negative the assumption that the police officer was examined as to the particulars of his information, and it is not required that the affidavit give in detail the source and extent of the information, and evidence procured in a search under the warrant is competent. *State v. Elder*, 217 N.C. 111, 6 S.E.2d 840 (1940).

**Affidavit Based on Oral Information Given before Taking Oath.**—Where the

peace officer duly swears to and signs the complaint-affidavit made out on his information, the fact that the oral information upon which it is based was given prior to the taking of the oath is not an irregularity, but is in accordance with statutory procedure. *State v. Rainey*, 236 N.C. 738, 74 S.E.2d 39 (1953).

**A search warrant is not part of the record proper in a prosecution based on evidence obtained in the course of a search made under it, and therefore the absence of a search warrant in the record proper does not show that search was made without a warrant, but to the contrary, it will be presumed that the search was legally made under a proper warrant, and therefore, in such instance, defendants' contention that their conviction was based on evidence rendered incompetent by this section asserted for the first time on appeal, is untenable.** *State v. Gaston*, 236 N.C. 499, 73 S.E.2d 311 (1952).

**Liquor Found Near Defendant's Premises but on Land of Another.**—Evidence of the finding of nontax-paid liquor near defendant's premises but actually on the land of another is not rendered incompetent because not discovered under authority of a search warrant, since a warrant is not necessary for its seizure. *State v. Harrison*, 239 N.C. 659, 80 S.E.2d 481 (1954).

**Section Not Applicable to Facts of Case.**—See *State v. McLamb*, 235 N.C. 251, 69 S.E.2d 537 (1952).

Where an undercover officer knocks on defendant's door, enters upon invitation, and buys whiskey from defendant, his testimony as to what he saw is competent, since, in the absence of fraud or deceit on the part of the officer, his actions do not amount to an illegal entry so as to render his testimony incompetent under this section. *State v. Smith*, 242 N.C. 297, 87 S.E.2d 593 (1955).

**Search of Automobile.**—Search of defendant's car by an officer without a warrant did not prevent the admission in evidence of implements of housebreaking and narcotic drugs found in such search, where defendant consented thereto. *State v. McPeak*, 243 N.C. 243, 90 S.E.2d 501 (1955).

Evidence held to support finding that owner consented to search of car. *State v. McPeak*, 243 N.C. 243, 90 S.E.2d 501 (1955).

**Same—Right of Passenger to Object.**—A passenger or guest in an automobile has no ground for objection to a search of the car by peace officers. *State v. McPeak*, 243 N.C. 243, 90 S.E.2d 501 (1955); *State*

v. Hamilton, 264 N.C. 277, 141 S.E.2d 506 (1965).

Applied in State v. Brady, 238 N.C. 404, 78 S.E.2d 126 (1953).

Quoted in State v. Giles, 254 N.C. 499, 119 S.E.2d 394 (1961).

Cited in State v. Stallings, 234 N.C. 265, 66 S.E.2d 822 (1951); State v. Brady, 238 N.C. 407, 78 S.E.2d 129 (1953).

**§ 15-27.1. Article applies to all search warrants; competency of evidence obtained by illegal search.**—The provision of this article shall apply to search warrants issued for any purpose including those issued pursuant to the provisions of G.S. 18-13. No facts discovered or evidence obtained by reason of the issuance of an illegal search warrant or without a legal search warrant in the course of any search, made under conditions requiring a search warrant, shall be competent as evidence in the trial of any action. (1957, c. 496.)

**Editor's Note.**—For a discussion of the exclusionary rule, see 39 N.C.L. Rev. 193 (1961).

The purpose of this section was to change the law of evidence in North Carolina, and not the substantive law as to what constitutes legal or illegal search. State v. Coffey, 255 N.C. 293, 121 S.E.2d 736 (1961); State v. Stevens, 264 N.C. 737, 142 S.E.2d 588 (1965).

A search that was legal without a warrant before the enactment of this section is still legal, and evidence so obtained still competent. State v. Coffey, 255 N.C. 293, 121 S.E.2d 736 (1961); State v. Stevens, 264 N.C. 737, 142 S.E.2d 588 (1965).

This section makes this article applicable to all search warrants with specific reference to those issued under § 18-13. State v. Mock, 259 N.C. 501, 130 S.E.2d 863 (1963).

**It Does Not Nullify § 18-13.**—This section did not nullify § 18-13, indeed, it recognizes it as specifically applying to intoxicants. State v. Mock, 259 N.C. 501, 130 S.E.2d 863 (1963).

**But Makes §§ 15-26 and 15-27 Applicable to Warrants Issued Thereunder.** — Prior to the enactment of this section

search warrants for illegal liquor were governed by § 18-13 and § 15-27 was not applicable. The effect of this section was to make the requirements of §§ 15-26 and 15-27, applicable to search warrants obtained under § 18-13. State v. Mock, 259 N.C. 501, 130 S.E.2d 863 (1963).

**When Evidence Incompetent.**—To render evidence incompetent under this section, it must have been obtained (1) in the course of search, (2) under conditions requiring a search warrant, and (3) without a legal search warrant. State v. Coffey, 255 N.C. 293, 121 S.E.2d 736 (1961); State v. Stevens, 264 N.C. 737, 142 S.E.2d 588 (1965).

Where there was no evidence that defendant consented to or invited a search of his home and no evidence that the search was incident to a lawful arrest, the search of defendant's home by the three officers without a search warrant was made under conditions requiring a search warrant, and consequently the facts discovered and the evidence obtained were rendered incompetent and improperly admitted in evidence. State v. Stevens, 264 N.C. 737, 142 S.E.2d 588 (1965).

## ARTICLE 5.

### *Peace Warrants.*

**§ 15-28. Officers authorized to issue peace warrants.**—The following magistrates have power to cause to be kept all the laws made for the preservation of the public peace, and in execution of that power to require persons to give security to keep the peace, in the manner provided in this chapter, namely: The Chief Justice and associate justices of the Supreme Court, the judges of the superior courts, and of any special courts which may hereafter be created, the justices of the peace, the mayors or other chief officers of all cities and towns. (1868-9, c. 178, subc. 2, s. 1; Code, s. 1216; Rev., s. 3165; C. S., s. 4531.)

**A Criminal Action.**—A peace warrant is a criminal action prosecuted by the State, at the instance of an individual, to prevent an apprehended crime against his person

or property, and is within the exclusive jurisdiction of a justice of the peace. State v. Locust, 63 N.C. 574 (1869); State v. Oates, 88 N.C. 668 (1883).



**§ 15-29. Complaint and examination.**—Whenever complaint is made in writing, and upon oath, to any such magistrate that any person has threatened to commit any offense against the person or property of another, it shall be the duty of such magistrate to examine such complainant and any witnesses who may be produced on oath, to reduce such examination to writing, and to cause the same to be subscribed by the parties so examined. (1868-9, c. 178, subc. 2, s. 2; Code, s. 1217; Rev., s. 3166; C. S., s. 4532.)

**Applicant Should Not Be Bound Over.**—It is error for a justice of the peace to bind to the superior court an applicant for a

peace warrant against whom no charge is made. *State v. Bass*, 75 N.C. 139 (1876).

**§ 15-30. Warrant issued.**—If it shall appear from such examination that there is just reason to fear the commission of any such offense by the person complained of, it shall be the duty of the magistrate to issue a warrant under his hand, with or without a seal, reciting the complaint, and commanding the officer to whom it is directed forthwith to apprehend the person so complained of, and bring him before such magistrate or some other magistrate authorized to issue such warrant. (1868-9, c. 178, subc. 2, s. 3; Code, s. 1218; Rev., s. 3167; C. S., s. 4533.)

**Warrant Should Contain Allegations.**—A peace warrant in which is alleged no threat, fact or circumstance from which the court can determine whether the fear

of the prosecutor is well founded, should be quashed. *State v. Cooley*, 78 N.C. 538 (1878); *State v. Goram*, 83 N.C. 664 (1880).

**§ 15-31. To whom warrant directed.**—The warrant shall be directed to the sheriff, coroner or any constable, each of whom shall have power to execute the same within his county; and if no sheriff, coroner or constable can conveniently be found, the warrant may be directed to any person whatever, who shall have power to execute the same within the county in which it is issued. No justice of the peace, or mayor, or other chief officer of any city or town shall direct his warrant to any officer outside the county of said justice or chief officer. (1868-9, c. 178, subc. 2, s. 4; Code, s. 1219; Rev., s. 3169; C. S., s. 4534.)

**Right of Private Person to Make Arrest.**—A private person has no authority to make an arrest for a riot, rout, affray, or other breach of the peace, without warrant, except when such offenses are being committed in his presence; nor can a justice of the peace confer such authority by a mere verbal order or command. *State v. Campbell*, 107 N.C. 948, 12 S.E. 441 (1890).

**Section Confers Extraordinary Power.**

—The power conferred by this section is the only extraordinary case in which a justice of the peace is authorized to depute one, who is not an officer, to execute process. *State v. Jones*, 48 N.C. 404 (1856); *Marsh v. Williams*, 63 N.C. 371 (1869); *McKee v. Angel*, 90 N.C. 60 (1884).

**§ 15-32. Defendant recognized to keep the peace.**—Whenever any person complained of on a peace warrant is brought before a justice of the peace, such person may be required to enter into a recognizance, payable to the State of North Carolina, in such sum, not exceeding one thousand dollars, as such justice shall direct, with one or more sufficient sureties, to appear before some justice of the peace within a period not exceeding six months, and not depart the court without leave, and in the meanwhile to keep the peace and be of good behavior towards all the people of the State, and particularly towards the person requiring such security. (1879, c. 92, s. 9; Code, ss. 894, 1220; Rev., s. 3170; C. S., s. 4535.)

**Jurisdiction Given to Justices.**—This section gives to justices of the peace exclusive original jurisdiction of peace war-

rants and proceedings thereunder. *State v. Oates*, 88 N.C. 668 (1883).

**§ 15-33. Defendant discharged, or new recognizance required.**—If the complainant does not appear, the party recognized shall be discharged, unless good cause be shown to the contrary. If the respective parties appear, the court

shall hear their allegations and proofs, and may either discharge the recognizance taken or they may require a new recognizance, as the circumstances of the case may require, for such time as may appear necessary, not exceeding one year. (1868-9, c. 178, subc. 2, s. 12; Code, s. 1226; Rev., s. 3171; C. S., s. 4536.)

**§ 15-34. Defendant imprisoned for want of security.**—If such recognizance is given, the party complained of shall be discharged; if such person fails to find such security, it shall be the duty of the magistrate to commit him to prison until he shall find the same, specifying in the mittimus the cause of commitment and the sum in which such security was required. (1868-9, c. 178, subc. 2, s. 6; Code, s. 1221; Rev., s. 3172; C. S., s. 4537.)

**Prisoner Worked on Roads.** — One worked upon the roads. *State v. Yandle*, 119 N.C. 874, 25 S.E. 796 (1896).

**§ 15-35. How discharged from imprisonment.**—Any person committed for not finding sureties of the peace as above provided, may be discharged by any magistrate upon giving such security as was originally required of such person, or by a justice of the Supreme Court, or judge of the superior or criminal court, by giving such other security as may seem sufficient. (1868-9, c. 178, subc. 2, s. 7; Code, s. 1222; Rev., s. 3174; C. S., s. 4538.)

**§ 15-36. Defendant may appeal.**—In all proceedings on peace warrants the defendant may appeal from the decision of the justice of the peace to the superior court by giving the bond required by the justice of the peace to keep the peace, in addition to the appeal bond, when the case shall be heard by the judge holding the court in the county. (1901, c. 66; Rev., s. 3173; C. S., s. 4539.)

**Editor's Note.** — Before passage of this section it was held several times that there was no appeal in peace warrant proceedings from the justice of the peace to the superior court. See *State v. Gregory*, 118 N.C. 1199, 24 S.E. 712 (1896), citing *State v. Lyon*, 93 N.C. 575 (1885) and *State v. Walker*, 94 N.C. 857 (1886).

**§ 15-37. Breach of peace in presence of court.**—Every person who in the presence of any magistrate specified in the first section of this article, or in the presence of any court of record, shall make any affray, or threaten to kill or beat another, or to commit any offense against his person or property; and all persons who, in the presence of such magistrate or court, shall contend with hot and angry words, may be ordered by such magistrate or court, without any other proof, to give such security as above specified, and in case of failure so to do, may be committed as above provided. (1868-9, c. 178, subc. 2, s. 9; Code, s. 1224; Rev., s. 3168; C. S., s. 4540.)

**§ 15-38. Recognizance returned to superior court.** — Every recognizance taken pursuant to the provisions of this article shall be transmitted by the magistrate taking the same to the next term of the superior court for any county in which the offense is charged to have been committed. (1868-9, c. 178, subc. 2, s. 8; Code, s. 1223; Rev., s. 3175; C. S., s. 4541.)

## ARTICLE 6.

### *Arrest.*

**§ 15-39. Persons present may arrest for breach of peace.** — Every person present at any riot, rout, affray or other breach of the peace, shall endeavor to suppress and prevent the same, and, if necessary for that purpose, shall arrest the offenders. (1868-9, c. 178, subc. 1, s. 1; Code, s. 1124; Rev., s. 3176; C. S., s. 4542.)

**Cross References.**—As to arrest in civil cases, see § 1-409 et seq. As to arrest of tramps by persons who are not officers, see § 14-341.

**Editor's Note.** — For an article on the law of arrest in North Carolina, see 15 N.C.L. Rev. 101. For an article on arrest without warrant in misdemeanor cases, see 33 N.C.L. Rev. 17 (1954).

**In this State the power of arrest without warrant is defined and limited entirely by legislative enactments.** And the rule is that where the right and power of arrest without warrant is regulated by statute, an arrest without warrant except as authorized by statute is illegal. *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954).

**Article Is Mainly Declaratory of Common Law.**—This article clarifies, in some particulars modifies, and in other ways extends, the pre-existing rules of the common law governing arrest without warrant, but in the main the article is declaratory of the common law. *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954).

This section follows in the main the pre-existing principles of the common law. *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954).

**Authority Strictly Limited.** — The authority given by this section to private persons to make arrests without warrant only extends to the offenses therein mentioned and committed under the conditions therein prescribed. *State v. Campbell*, 107 N.C. 948, 12 S.E. 441 (1890).

Arrests for misdemeanors without a warrant are limited strictly to certain misdemeanors committed in the presence of the party making the arrest and unless expressly authorized by law, such arrests can only be made for a breach of the peace as defined in this section. *Alexander v. Lindsey*, 230 N.C. 663, 55 S.E.2d 470 (1949).

**Same — Breach of Town Ordinance.**—The violation of a town ordinance, even in the presence of a policeman, does not necessarily give him a right to arrest the offender. *State v. Belk*, 76 N.C. 10 (1877).

**Same—After Offense Committed.**—After the offenses — misdemeanors—mentioned above have been committed, and the offenders have dispersed, a private person has no authority of himself to arrest the offenders without warrant nor can he go out to make such arrest by the mere order of justice of the peace or any officer. *State v. Campbell*, 107 N.C. 948, 12 S.E. 441 (1890).

**Liability When Authority Exceeded.**—If a private person, of his own purpose, without warrant, undertakes to make arrest of a party guilty of only a misdemeanor otherwise than in the cases and in the way pointed out by the section he at once becomes a trespasser, and the party whom he so undertakes to deprive of his

liberty may resist him by such force as may be necessary to defend himself successfully. *State v. Campbell*, 107 N.C. 948, 12 S.E. 441 (1890).

**Power of Arrest under This Section Is Referable Entirely to Question of Breach of Peace.**—This section confers no power of arrest without warrant in misdemeanor cases, as such. The power of arrest without warrant is referable entirely to the question of breach of the peace. The test is not whether the offense is a misdemeanor, but, rather, whether an arrest is necessary in order to "suppress and prevent" a breach of the peace. The fact that an offense arrestable under this section as a breach of the peace is also a misdemeanor is purely coincidental. *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954).

**What Constitutes Breach of Peace.**—As to what constitutes a breach of the peace within the meaning of the rules which authorize an arrest without warrant in such cases, the better reasoned authorities emphasize the essentiality of showing as an element of the offense a disturbance of public order and tranquility by act or conduct not merely amounting to unlawfulness but tending also to create public tumult and incite others to break the peace. *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954).

**When Arrest Necessary to "Suppress and Prevent" Breach of Peace.** — An arrest without warrant may be made under the provisions of this section by anyone when it is necessary to "suppress and prevent" a breach of the peace. This means that either a peace officer or a private person may arrest anyone who in his presence is (1) actually committing or (2) threatening to commit a breach of the peace. To justify an arrest on the ground of necessity in order to "suppress" a breach of the peace, the conduct of the person arrested must amount to an actual breach of the peace in the presence of the person making the arrest. To justify an arrest in order to "prevent" a breach of the peace, ordinarily there must be at least a threat of a breach of the peace, together with some overt act in attempted execution of the threat. *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954).

**When Breach of Peace Is Threatened.**—A breach of the peace is threatened within the meaning of this section if the offending person's conduct under the surrounding facts and circumstances is such as reasonably justifies a belief that the perpetration of an offense amounting to a breach of the peace is imminent. *State v.*



Mobley, 240 N.C. 476, 83 S.E.2d 100 (1954).

**Reasonable Ground for Belief Does Not Justify Arrest under This Section.**—This section contains no provisions, comparable to those in § 15-41 dealing with felony cases, which justify arrest when the facts furnish reasonable ground to believe an offense covered by this section is being committed. Therefore, a person making an arrest under the authority of this section must determine, at his peril, preliminary to proceeding without warrant, whether an offense arrestable under this

section is being committed. *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954).

**Mere Drunkenness Will Not Justify Arrest Without Warrant.**—In applying this section it is manifest that mere drunkenness, unaccompanied by language or conduct which creates, or is reasonably calculated to create, public excitement and disorder amounting to a breach of the peace, will not justify arrest without warrant. *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954).

**Cited in** *State v. Phillips*, 229 N.C. 538, 50 S.E.2d 306 (1948).

**§ 15-40. Arrest for felony, without warrant.**—Every person in whose presence a felony has been committed may arrest the person whom he knows or has reasonable ground to believe to be guilty of such offense, and it shall be the duty of every sheriff, coroner, constable or officer of the police, upon information, to assist in such arrest. (1868-9, c. 178, subc. 1, s. 6; Code, s. 1129; Rev., s. 3177; C. S., s. 4543.)

**Editor's Note.**—For an article on arrest without warrant in misdemeanor cases, see 33 N.C.L. Rev. 17 (1954).

**Right of Private Person to Arrest.**—A private person may arrest the felon without a warrant, and it is his duty to do so if he is present at the time the felony is committed. *Martin v. Houck*, 141 N.C. 317, 54 S.E. 291 (1906). In such case, he may and ought to arrest and, as soon as practicable, take him before a proper officer, to the end that he may be duly held to answer for the offense. In such case, the private person would not be justified unless a felony had actually been committed. It is better and safer to obtain a warrant when this may be promptly done. *State v. Roane*, 13 N.C. 58 (1828); *Brockway v. Crawford*, 48 N.C. 433 (1856); *State v. Bryant*, 65 N.C. 327 (1871); *State v. Shelton*, 79 N.C. 605 (1878); *Neal v. Joyner*, 89 N.C. 287 (1883); *State v. Campbell*, 107 N.C. 948, 12 S.E. 441 (1890); *Martin v. Houck*, 141 N.C. 317, 54 S.E. 291 (1906).

In *State v. Stancill*, 128 N.C. 606, 38 S.E. 926 (1901), the court says: "A private citizen has the right to arrest a felon, whether he is present when the felony is committed or not. When he is not present, it devolves on him to show that the felony, for which he arrested, had been committed." 15 N.C.L. Rev. 103.

This section confers on a private citizen the right of arrest only when a felony is actually committed in his presence. Thus, if it turns out that the supposed offense is not a felony, then the arresting private citizen may not, under the terms of this section, justify taking the suspect into custody. However, if a felony actually has been committed in his presence, then the

private person making the arrest has the protective benefits of this section if he arrest either (1) the guilty person or (2) the person he has reasonable ground to believe is guilty of the offense, although perchance the person arrested may be innocent. *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954).

**As to what constitutes reasonable ground for believing that accused has committed a felony in the presence of the person making the arrest,** see *State v. Blackwelder*, 182 N.C. 899, 109 S.E. 644 (1921).

**Party Arresting Must State His Purpose.**—A private citizen, attempting to arrest a felon without warrant, must make his purpose known, and for what offense he is attempting arrest. And unless he does so, the party attempted to be arrested has the right to resist the arrest. *State v. Garrett*, 60 N.C. 144 (1863); *State v. Belk*, 76 N.C. 10 (1877); *Neal v. Joyner*, 89 N.C. 287 (1883); *State v. McNinch*, 90 N.C. 695 (1884); *State v. Stancill*, 128 N.C. 606, 38 S.E. 926 (1901). And unless he notifies the felon of his purpose, he will be guilty of a trespass. *State v. Bryant*, 65 N.C. 327 (1871).

**Force Permissible in Arrest.**—Where a private person undertakes to arrest a felon or an escaped felon, and has made his purpose and reason for the arrest known, he must then proceed in a peaceable manner to make the arrest, and if he is resisted he may use such force as is necessary to overcome the resistance, if used for that purpose alone. But this is put upon the ground that the party attempting to make the arrest becomes personally involved, and he has the right to defend himself.



State v. Stancill, 128 N.C. 606, 38 S.E. 926 (1901).

**No Right to Shoot Escaping Subject.** — Where the attempted arrest is for a petty larceny, and the party runs off, the party attempting the arrest has no right to shoot and kill him. State v. Bryant, 65 N.C. 327 (1871); State v. Stancill, 128 N.C. 606, 38 S.E. 926 (1901).

**When the victim in an assault and robbery charge pointed out the defendant to an officer as being one of his assailants, the officer not only had the right but the duty to arrest the defendant under this section and § 15-41.** State v. Grant, 248 N.C. 341, 103 S.E.2d 339 (1958).

**§ 15-41. When officer may arrest without warrant.**—A peace officer may without warrant arrest a person:

- (1) When the person to be arrested has committed a felony or misdemeanor in the presence of the officer, or when the officer has reasonable ground to believe that the person to be arrested has committed a felony or misdemeanor in his presence;
- (2) When the officer has reasonable ground to believe that the person to be arrested has committed a felony and will evade arrest if not immediately taken into custody. (1868-9, c. 178, subc. 1, s. 3; Code, s. 1126; Rev., s. 3178; C. S., s. 4544; 1955, c. 58.)

**Cross References.**—As to power of bank examiner to arrest, see § 53-121. As to State forest rangers, see § 113-49. As to arrest of persons escaped from penal and correctional institutions, see § 153-184. As to arrest by appointees of superintendents of the State hospitals for the insane, see § 122-33. As to arrest of persons violating the laws regulating intoxicating liquors, see §§ 18-6 and 18-23. As to arrest by the commanding officer of militia, see § 127-106. As to arrest of parolee from the State prison whose parole has been revoked, see § 148-63. As to arrest of parolee or escapee from a reformatory, see § 134-31. As to arrest of a probationer, see §§ 15-200 and 15-205. As to arrest for violation of the weights and measures laws, see § 81-12. See note to § 15-40.

**Editor's Note.**—For a discussion of arrest without warrant, see 15 N.C.L. Rev. 101. For an article and note on arrest without warrant in misdemeanor cases, see 33 N.C.L. Rev. 17 (1954); 35 N.C.L. Rev. 290 (1957).

**Common-Law Provisions.** — At common law there is this distinction between a private individual and a constable; in order to justify the former in causing the imprisonment of a person, he must not only make out a reasonable ground of suspicion, but he must prove that an actual felony has been committed. Whereas a constable, having reasonable ground to suspect that a felony has been committed, is authorized

**A federal prohibition officer, acting under the National Prohibition Act, can derive no further authority to arrest an offender without a warrant than the federal statute itself provides; and no further power can be acquired by him by virtue of this section, permitting such to be done by a private person, in case of a felony, such as murder, rape, and the like, when the unlawful act has been committed in his presence.** State v. Burnett, 183 N.C. 703, 110 S.E. 588 (1922).

**Quoted in** Alexander v. Lindsey, 230 N.C. 663, 55 S.E.2d 470 (1949).

to detain the party suspected until an inquiry shall be made by the proper authorities. Neal v. Joyner, 89 N.C. 287 (1883).

**An Emergency Measure.**—The arrest of a person by an officer without a warrant is allowed upon emergency. Hobbs v. Washington, 168 N.C. 293, 84 S.E. 391 (1915).

**Powers of Police Officer.**—A police officer was not known to the common law, and therefore he can exercise powers only within the town limits. Martin v. Houck, 141 N.C. 317, 54 S.E. 291 (1906). And is guilty of assault when he arrests without a warrant outside such limits. Sossamon v. Cruse, 133 N.C. 470, 45 S.E. 757 (1903). Nor can a police officer recover under the Workmen's Compensation Act for injuries sustained in pursuing misdemeanant if the accident occurs outside town limits. Wilson v. Mooresville, 222 N.C. 283, 22 S.E.2d 907 (1942).

**It is an essential of jurisdiction that a criminal offense shall be sufficiently charged in a warrant or indictment.** State v. Green, 251 N.C. 40, 110 S.E.2d 609 (1959).

**But it is not an essential of jurisdiction that a warrant be issued prior to arrest and that the defendant be initially arrested thereunder.** State v. Green, 251 N.C. 40, 110 S.E.2d 609 (1959).

**Section authorizes sheriff to arrest anyone committing crime of trespass in his presence.** State v. Brown, 264 N.C. 191, 141 S.E.2d 311 (1965).

But the authority to call for assistance was withdrawn by the 1955 amendment. *State v. Brown*, 264 N.C. 191, 141 S.E.2d 311 (1965).

The legislature, in striking from this section in 1955 the authority of an officer in a simple misdemeanor to call for assistance in making an arrest, was mindful of the changes which have taken place in law enforcement since the remote time when the peace officer needed authority to assemble a posse comitatus to aid in keeping the peace and in pursuing and arresting felons. *State v. Brown*, 264 N.C. 191, 141 S.E.2d 311 (1965).

**Reasonable Ground for Belief Excuses Officer.**—Under this section the significant features are that the felony or dangerous wound need not necessarily be committed or inflicted in the presence of the officer. Indeed, in order to justify the arrest it is not essential that any such serious offense be shown to have been actually committed. It is only necessary that the officer have reasonable ground to believe such offense has been committed. Moreover, in the instances enumerated an arresting officer is protected by this section against consequences of an erroneous arrest based on mistaken identity of the offender. *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954).

There is nothing in this section that makes it mandatory or permissible for an officer to arrest a felon without a warrant when the felony was not committed in his presence, unless he has reasonable ground to believe such felony had been committed and that the accused would evade arrest if not immediately taken into custody. *State v. Hucks*, 264 N.C. 160, 141 S.E.2d 299 (1965).

In making an arrest upon personal observation and without a warrant an officer will be excused, though no offense was perpetrated, if the circumstances are such as to reasonably warrant the belief that it had been. *State v. McNinch*, 90 N.C. 695 (1884); *State v. Campbell*, 182 N.C. 911, 110 S.E. 86 (1921). As to what constitutes reasonable ground, see *State v. Blackwelder*, 182 N.C. 899, 109 S.E. 644 (1921).

**Same—What Must Be Shown.**—A peace officer may justify an arrest without a warrant, when he shows satisfactory reasons for his belief of the fact and the guilt of the suspected party, and that delay in procuring a warrant might enable the party to escape. In such case, proof of actual commission of the crime is not necessary. *Neal v. Joyner*, 89 N.C. 287 (1883).

**Burden.**—It was incumbent upon the

State to satisfy the jury from the evidence beyond a reasonable doubt that defendant violated § 14-335 in the presence of the officer, or that the officer had reasonable grounds to believe the defendant had done so, in order to establish the authority and duty of the officer to make the arrest without a warrant. *State v. Fenner*, 263 N.C. 694, 140 S.E.2d 349 (1965).

**Reasonableness of Grounds a Jury Question.**—In an action for wrongful death growing out of the mortal wounding of intestate in a scuffle while a police officer was attempting to arrest him, the court should have instructed the jury that the jury and not the officer must be the judge of the reasonableness of the grounds on which the officer acted. *Perry v. Gibson*, 247 N.C. 212, 100 S.E.2d 341 (1957).

**Defendant Found at Still Engaged in Manufacture of Whiskey.**—An alcoholic beverage control officer who saw defendant at a still unlawfully engaged in the manufacture of whiskey had a lawful right to arrest defendant there without a warrant. *State v. Taft*, 256 N.C. 441, 124 S.E.2d 169 (1962).

**The superintendent of a convict gang is not such an officer as contemplated by this section.** *State v. Stancill*, 128 N.C. 606, 38 S.E. 926 (1901).

**Rearrest of Escaped Convict.**—An escaped convict may be rearrested in any county of the State without new process, by the officer in charge of him, to compel him to complete the service of the sentence imposed by the court. *State v. Finch*, 177 N.C. 599, 99 S.E. 409 (1919).

**Arrest of Participants in Indecent Show.**—See *Brewer v. Wynne*, 163 N.C. 319, 79 S.E. 629 (1913).

**Officer Cannot Shoot at Fleeing Misdemeanant.**—Where a person is fleeing from arrest, charged with a misdemeanor, and is out of the control of the officer, such officer is guilty of an assault if he shoots at the said person. And indeed the use of a pistol in attempting to arrest for a misdemeanor is excessive force. *Sossamon v. Cruse*, 133 N.C. 470, 45 S.E. 757 (1903).

**This section applies only to peace officers of the State and in the enforcement of the State law, and does not affect the conduct or powers of federal officers unless the principles therein are extended to such officers by a federal statute, when in the enforcement of a valid federal law.** *State v. Burnett*, 183 N.C. 703, 110 S.E. 588 (1922).

**Admissible Evidence in Action for Unlawful Arrest.**—An officer may make an arrest without a warrant when he acts in



good faith and has reasonable grounds to believe that a felony has been committed, and that a particular person is guilty thereof and might escape unless arrested, and in an action against an officer for malicious and unlawful arrest, evidence that a robbery had been committed is held competent upon the issue, and defendant's evidence tending to show good faith and that he was acting within the provisions of the statute in arresting plaintiffs was properly submitted to the jury. *Hicks v. Nivens*, 210 N.C. 44, 185 S.E. 469 (1936).

**Jailer as other officer**, see *Gowens v. Alamance County*, 216 N.C. 107, 3 S.E.2d 339 (1939) (dis. op.).

**§ 15-42. Sheriffs and deputies granted power to arrest felons anywhere in State.**—When a felony is committed in any county in this State, and upon the commission of the felony, the person or persons charged therewith flees or flee the county, the sheriff of the county in which the crime was committed, and/or his bonded deputy or deputies, either with or without process, is hereby given authority to pursue the person or persons so charged, whether in sight or not, and apprehend and arrest him or them anywhere in the State. (1935, c. 204.)

**Quoted in** *Alexander v. Lindsey*, 230 N.C. 663, 55 S.E.2d 470 (1949).

**Applied in** *State v. Hooper*, 227 N.C. 633, 44 S.E.2d 42 (1947); *State v. Clyburn*, 247 N.C. 455, 101 S.E.2d 295 (1958); *State v. Avent*, 253 N.C. 580, 118 S.E.2d 47 (1961); *State v. Haney*, 263 N.C. 816, 140 S.E.2d 544 (1965); *State v. Hamilton*, 264 N.C. 277, 141 S.E.2d 506 (1965); *State v. Eger-ton*, 264 N.C. 328, 141 S.E.2d 515 (1965).

**Quoted in** *Alexander v. Lindsey*, 230 N.C. 663, 55 S.E.2d 470 (1949).

**Cited in** *State v. Macon*, 198 N.C. 483, 152 S.E. 407 (1930); *Daniels v. Crawford*, 99 F. Supp. 208 (E.D.N.C. 1951); *State v. Furmage*, 250 N.C. 616, 109 S.E.2d 563 (1959); *Greer v. Skyway Broadcasting Co.*, 256 N.C. 382, 124 S.E.2d 98 (1962).

**Stated in** *Wilson v. Mooresville*, 222 N.C. 283, 22 S.E.2d 907 (1942).

**§ 15-43. House broken open to prevent felony.**—All persons are authorized to break open and enter a house to prevent a felony about to be committed therein. (1868-9, c. 178, subc. 1, s. 4; Code, s. 1127; Rev., s. 3179; C. S., s. 4545.)

**Cited in** *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954).

**§ 15-44. When officer may break and enter houses.**—If a felony or other infamous crime has been committed, or a dangerous wound has been given and there is reasonable ground to believe that the guilty person is concealed in a house, it shall be lawful for any sheriff, coroner, constable, or police officer, admittance having been demanded and denied, to break open the door and enter the house and arrest the person against whom there shall be such ground of belief. (1868-9, c. 178, subc. 1, s. 5; Code, s. 1128; Rev., s. 3180; C. S., s. 4546.)

**Where an officer comes armed with process** founded on a breach of the peace, he may, after demand of admittance for the purpose of making the arrest, and refusal of the occupant to open the doors of a house, lawfully break them in order to effect an entrance and if he act in good faith in doing so, both he and his posse

comitatus will be protected. 15 N.C.L. Rev. 125, citing *State v. Mooring*, 115 N.C. 709, 20 S.E. 182 (1894).

**Cited in** *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954); *Ker v. California*, 374 U.S. 23, 83 Sup. Ct. 1623, 10 L. Ed. 2d 726 (1963).

**§ 15-45. Persons summoned to assist in arrest.** — Every person summoned by a judge, justice, mayor, intendant, chief officer of any incorporated town, sheriff, coroner or constable, to aid in suppressing any riot, rout, unlawful assembly, affray or other breach of the peace, or to arrest the persons engaged in the commission of such offenses, or to prevent the commission of any felony or larceny which may be threatened or begun, shall do so. (1868-9, c. 178, subc. 1, s. 2; Code, s. 1125; Rev., s. 3181; C. S., s. 4547.)

**Cross Reference.** — As to liability for failure to aid police officers, see § 14-224.

**Protection of Persons Assisting.** — This

section makes it imperative on the person so summoned to aid, whether he be present at the perpetration of the offense when

summoned, or not. *State v. Campbell*, 107 N.C. 948, 12 S.E. 441 (1890). The protection extends to persons aiding. *State v. McMahan*, 103 N.C. 379, 9 S.E. 48 (1889).

**This section and § 15-47 do not prescribe mandatory procedures** affecting the validity of a trial. *State v. Hargett*, 255 N.C. 412, 121 S.E.2d 589 (1961).

**Limits Imposed by Section.**—The power conferred upon officers by this section is limited to the cases mentioned in the section, and while they are actually being perpetrated, or are imminent. It does not go to the extent of authorizing the persons thus summoned to make arrests, without warrants, where the offense has been accomplished and the offenders have dispersed. *State v. Campbell*, 107 N.C. 948, 12 S.E. 441 (1890).

**Policeman Given Same Authority as**

**§ 15-46. Procedure on arrest without warrant.**—Every person arrested without warrant shall be either immediately taken before some magistrate having jurisdiction to issue a warrant in the case, or else committed to the county prison, and, as soon as may be, taken before such magistrate, who, on proper proof, shall issue a warrant and thereon proceed to act as may be required by law. (1868-9, c. 178, subc. 1, s. 7; Code, s. 1130; Rev., s. 3182; C. S., s. 4548.)

**Proper Compliance Protects Justice.** — If the justice would comply with this section by carefully examining the complainant, on oath, before issuing his warrant, few cases would arise in which he would not have judgment for his fees. *Merrimon v. Commissioners*, 106 N.C. 369, 11 S.E. 267 (1890).

**The object of a preliminary hearing under this section** is to effect a release for one who is held in violation of his rights. *State v. Chamberlain*, 263 N.C. 406, 139 S.E.2d 620 (1965).

**Failure to Observe Provisions of Section.**—While there are circumstances under which a failure to observe the provisions of this section and § 15-47 may not affect constitutional rights, yet where an offense as serious as robbery with firearms is charged, such failure must be given great weight in a hearing under the Post-Conviction Act (§ 15-217 et seq.). *State v. Graves*, 251 N.C. 550, 112 S.E.2d 85 (1960).

**Duty of City Police Officer.** — A police officer within the limits of his city may summarily and without warrant arrest a person for a misdemeanor committed in his presence. But in such case it is the

**Sheriff within Town Limits.**—A policeman has the authority under general statute to deputize a citizen to aid him in serving a warrant for breach of the peace, a policeman being given the same authority, within the town limits, in making arrests as a sheriff. *Tomlinson v. Norwood*, 208 N.C. 716, 182 S.E. 659 (1935).

**Trespass is not within the authorized offenses embraced in this section.** *State v. Brown*, 264 N.C. 191, 141 S.E.2d 311 (1965).

Hence, a sheriff, neither by statute nor by common law, could lawfully command the defendant to assist him in arresting for trespass. *State v. Brown*, 264 N.C. 191, 141 S.E.2d 311 (1965).

**Cited in** *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954).

duty of the officer to inform the person arrested of the charge against him and immediately take him before someone authorized to issue criminal warrants and have warrant issued, giving him opportunity to provide bail and communicate with counsel and friends. *Perry v. Hurdle*, 229 N.C. 216, 49 S.E.2d 400 (1948).

**Liability of Officer for Wrongful Delay.**—A warrant must be procured as soon after the arrest as possible and, where it appears that this was not done, the officer responsible for the arrest is personally answerable in damages. *Hobbs v. Washington*, 168 N.C. 293, 84 S.E. 391 (1915).

**Custody of Prisoner.**—If offender is arrested at a time and under such circumstances as he cannot be carried immediately before a justice, the officer may keep him in custody, commit him to jail or the lockup, or even tie him, according to the nature of the offense and the necessity of the case. 15 N.C.L. Rev. 127, citing *State v. Freeman*, 86 N.C. 683 (1882).

**Quoted in** *Davis v. North Carolina*, 196 F. Supp. 488 (E.D.N.C. 1961).

**Cited in** *State v. Mobley*, 240 N.C. 476, S.E.2d 100 (1954).

**§ 15-47. Arresting officer to inform offender of charge, allow bail except in capital cases, and permit communication with counsel or friends.**—Upon the arrest, detention, or deprivation of the liberties of any person by an officer in this State, with or without warrant, it shall be the duty of the officer making the arrest to immediately inform the person arrested of the charge against him, and it shall further be the duty of the officer making said arrest, ex-



cept in capital cases, to have bail fixed in a reasonable sum, and the person so arrested shall be permitted to give bail bond; and it shall be the duty of the officer making the arrest to permit the person so arrested to communicate with counsel and friends immediately, and the right of such persons to communicate with counsel and friends shall not be denied. Provided that in no event shall the prisoner be kept in custody for a longer period than twelve hours without a warrant.

Any officer who shall violate the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1937, c. 257, ss. 1, 2; 1955, c. 889.)

**Cross References.**—As to bail generally, see § 15-102 et seq. As to failure to observe provisions of this section, see note to § 15-46.

**Editor's Note.** — For brief comment on the 1955 amendment, see 33 N.C.L. Rev. 543 (1955). For note on right to counsel in pre-trial situations, see 38 N.C.L. Rev. 630 (1960).

**The violation of this section,** in regard to bail and the manner of detention of defendant under arrest, would not render defendant's voluntary confession incompetent. *State v. Exum*, 213 N.C. 16, 195 S.E. 7 (1938).

**This section and § 15-45 do not prescribe mandatory procedures** affecting the validity of a trial. *State v. Hargett*, 255 N.C. 412, 121 S.E.2d 589 (1961).

**When the defendant, upon his arrest, is informed of the charge** against him, and "there is no evidence in the record tending to show that after his arrest and while he was in the custody of the sheriff the defendant demanded of the sheriff that he be permitted to communicate with friends or

with counsel," the provisions of this section are not applicable. *State v. Exum*, 213 N.C. 16, 195 S.E. 7 (1938).

Where accused persons were informed of the charge against them as required by this section and none of them made a request to be allowed to communicate with relatives or friends or to obtain counsel, objection to the failure of officers to inform them of the charge against them and their right to have counsel, cannot be sustained. *State v. Thompson*, 224 N.C. 661, 32 S.E.2d 24 (1944).

**The rights of communication go with a man into jail,** and reasonable opportunity to exercise them must be afforded by the restraining authorities. The denial of the opportunity to exercise that right is a denial of the right. *State v. Wheeler*, 249 N.C. 187, 105 S.E.2d 615 (1958).

**Quoted in** *State v. Reel*, 254 N.C. 778, 119 S.E.2d 876 (1961); *Davis v. North Carolina*, 196 F. Supp. 488 (E.D.N.C. 1961).

**Cited in** *State v. Green*, 251 N.C. 40, 110 S.E.2d 609 (1959).

## ARTICLE 7.

### *Fugitives from Justice.*

**§ 15-48. Outlawry for felony.**—In all cases where any two justices of the peace, or any judge of the Supreme, superior, or criminal courts shall, on written affidavit, filed and retained by such justice or judge, receive information that a felony has been committed by any person, and that such person flees from justice, conceals himself and evades arrest and service of the usual process of the law, the judge, or the two justices, being justices of the county wherein such person is supposed to lurk or conceal himself, are hereby empowered and required to issue proclamation against him reciting his name, if known, and thereby requiring him forthwith to surrender himself; and also, when issued by any judge, empowering and requiring the sheriff of any county in the State in which such fugitive shall be, and when issued by two justices, empowering and requiring the sheriff of the county of the justices, to take such power with him as he shall think fit and necessary for the going in search and pursuit of, and effectually apprehending, such fugitive from justice, which proclamation shall be published at the door of the courthouse of any county in which such fugitive is supposed to lurk or conceal himself, and at such other places as the judge or justices shall direct; and if any person against whom proclamation has been thus issued, continue to stay out, lurk and conceal himself, and do not immediately surrender himself, any citizen of the

State may capture, arrest and bring him to justice, and in case of flight or resistance by him, after being called on and warned to surrender, may slay him without accusation or impeachment of any crime. (1866, c. 62; 1868-9, c. 178, subc. 1, s. 8; Code, s. 1131; Rev., s. 3183; C. S., s. 4549.)

**Cross Reference.**—As to extradition, see § 15-55 et seq., and Appendix VI.

**Editor's Note.**—For note on outlawry, another "gothic column" in North Carolina, see 41 N.C.L. Rev. 634 (1963).

**Fugitive from Justice.**—A fugitive from justice is one who, having committed a crime in one jurisdiction, flees therefrom in order to evade the law and escape punish-

ment. *State v. Hall*, 115 N.C. 811, 20 S.E. 729 (1894).

**Outlaws Must Be Warned.**—"So careful is the law to protect those who have not been tried and convicted, that the 'outlaws' are entitled to be 'called upon and warned to surrender' before they are allowed to be slain." *State v. Stancill*, 128 N.C. 606, 38 S.E. 926 (1901) (dis. op.).

**§ 15-49. Fugitives from another state arrested.**—Any justice of the Supreme Court, or any judge of the superior court or of any criminal court, or any justice of the peace, or mayor of any city, or chief magistrate of any incorporated town, on satisfactory information laid before him that any fugitive or other person in the State has committed, out of the State and within the United States, any offense which, by law of the state in which the offense was committed, is punishable either capitally or by imprisonment for one year or upwards in any state prison, has full power and authority, and is hereby required, to issue a warrant for such fugitive or other person and commit him to any jail within the State for the space of six months, unless sooner demanded by the public authorities of the state wherein the offense may have been committed, pursuant to the act of Congress in that case made and provided. If no demand be made within that time the fugitive or other person shall be liberated, unless sufficient cause be shown to the contrary. (1868-9, c. 178, subc. 3, s. 34; Code, s. 1165; 1895, c. 103; Rev., s. 3184; C. S., s. 4550.)

**Editor's Note.**—See Editor's Note under § 15-132. The same defendants, who were freed in the case discussed in that note were rearrested and held under the provisions of this section which then provided for the arrest of "any fugitive in the State," etc. Upon a petition by the defendants for habeas corpus it was decided in *State v. Hall*, 115 N.C. 811, 20 S.E. 729 (1894), that they were not fugitives and hence could not be held for extradition. This section has since been amended by adding after the words "any fugitive" the words "or other person."

For a discussion of this and pertinent sections in connection with the law of arrest in this State, see 15 N.C.L. Rev. 101.

**In General.**—This section prescribes the manner in which criminals escaping from other states may be restored to that having jurisdiction of the offense, and its directions cannot be disregarded. It pro-

vides fully a method by which the crime may be punished, and at the same time guards and preserves the personal security of the citizen from lawless invasion. *State v. Shelton*, 79 N.C. 605 (1878).

**Process Necessary.**—No one has authority, without process legally issued in this State, to arrest a person charged with crime in another state and fleeing here for refuge. Such an arrest makes the parties engaged in it guilty of an assault and battery. *State v. Shelton*, 79 N.C. 605 (1878).

**Departure after Crime Is Flight from Justice.**—Departure from a jurisdiction after the commission of the act, in furtherance of the crime subsequently consummated, is a flight from justice, within the meaning of the law. In *re Sultan*, 115 N.C. 57, 20 S.E. 375 (1894).

**Cited in** *In re Veasey*, 196 N.C. 662, 146 S.E. 599 (1929).

**§ 15-50. Record kept, and copy sent to Governor.**—Every magistrate committing any person under § 15-49, shall keep a record of the whole proceedings before him, and immediately transmit a copy thereof to the Governor for such action as he may deem fit therein under the law. (1868-9, c. 178, subc. 3, s. 35; Code, s. 1166; Rev., s. 3185; C. S., s. 4551.)

**§ 15-51. Duty of Governor.**—The Governor shall immediately inform the governor of the state or territory in which the crime is alleged to have been com-

mitted, or the President of the United States, if it be alleged to have been committed within the District of Columbia, of the proceedings had in such case. (1868-9, c. 178, subc. 3, s. 36; Code, s. 1167; Rev., s. 3186; C. S., s. 4552.)

**§ 15-52. Person surrendered on order of Governor.**—Every sheriff or jailer in whose custody any person so committed shall be, upon the order of the Governor, shall surrender him to the person named in such order. (1868-9, c. 178, subc. 3, s. 37; Code, s. 1168; Rev., s. 3187; C. S., s. 4553.)

**§ 15-53. Governor may employ agents, and offer rewards.** — The Governor, on information made to him of any person, whether the name of such person be known or unknown, having committed a felony or other infamous crime within the State, and of having fled out of the jurisdiction thereof, or who conceals himself within the State to avoid arrest, or who, having been convicted, has escaped and cannot otherwise be apprehended, may either employ a special agent, with a sufficient escort, to pursue and apprehend such fugitive, or issue his proclamation, and therein offer a reward, not exceeding four hundred dollars, according to the nature of the case, as in his opinion may be sufficient for the purpose, to be paid to him who shall apprehend and deliver the fugitive to such person and at such place as in the proclamation shall be directed. (1800, c. 561, P. R.; R. C., c. 35, s. 4; 1866, c. 28; 1868-9, c. 52; 1870-1, c. 15; 1871-2, c. 29; Code, s. 1169; 1891, c. 421; Rev., s. 3188; C. S., s. 4554; 1925, c. 275, s. 6.)

**Editor's Note.** — This section formerly contained at the end a clause authorizing the Governor to issue warrants on the State Treasurer for sufficient money to carry out the provisions of the section. This clause made the section an exception to § 147-68 which provides that "no monies shall be paid out of the treasury except on the warrant of the auditor." By the 1925

amendment the provision authorizing warrants by the Governor was stricken out. The same act repealed C.S. s. 4556, which contained a similar provision. See *Burton v. Furman*, 115 N.C. 166, 20 S.E. 443 (1894).

**Cited in** *Madry v. Scotland Neck*, 214 N.C. 461, 199 S.E. 618 (1938).

**§ 15-54. Officer entitled to reward.** — Any sheriff or other officer who shall make an arrest of any person charged with crime for whose apprehension a reward has been offered, is entitled to such reward, and may sue for and recover the same in any court in this State having jurisdiction: Provided, that no reward shall be paid to any sheriff or other officer for any arrest made for a crime committed within the county of such sheriff or officer making such arrest. (1913, c. 132; 1917, c. 8; C. S., s. 4555.)

**Local Modification.**—Wake: C.S. s. 4555.

**Editor's Note.**—See 13 N.C.L. Rev. 15, as to whom an offer may be made.

**Law Giving Reward to Sheriff Valid.** — In view of this and the preceding section, Public Local Laws of 1925, c. 318, s. 2, providing that the board of commissioners

should pay a reward to the sheriff or other police officers for arresting violators of the prohibition law, is a valid exercise of the police power of the State and not contrary to public policy. *Hutchins v. Commissioners*, 193 N.C. 659, 137 S.E. 711 (1927).

## ARTICLE 8.

### *Extradition.*

**§ 15-55. Definitions.**—Where appearing in this article the term "Governor" includes any person performing the functions of Governor by authority of the law of this State. The term "executive authority" includes the Governor, and any person performing the functions of governor in a state other than this State. The term "state," referring to a state other than this State, includes any other state or territory, organized or unorganized, of the United States of America. (1937, c. 273, s. 1.)

**Cross Reference.**—As to rules of practice of the executive department of North

Carolina in making requisitions, see Appendix IV.



**Editor's Note.** — The former extradition law, Public Laws 1931, c. 124, was repealed by Public Laws 1937, c. 273, s. 29. The repealed law seemed to provide for extradition proceedings only when the crime with which the accused was charged was punishable—in the state where committed—by death or imprisonment for more than one year in the State's prison, or where the crime consisted of abandonment of wife or children. However, the Supreme Court indicated in the case of *In re Hubbard*, 201 N.C. 472, 160 S.E. 569, 81 A.L.R. 547 (1931), that a person could be extradited for any crime. The new extradition law is in accord with *In re Hubbard*, specifically providing for the extradition of a

person accused of any crime, whether felony or misdemeanor. Furthermore, provision is made for return to a demanding state of a person who intentionally commits an act outside of the demanding state resulting in a crime in the demanding state. At last the extradition laws cover a situation such as existed in *State v. Hall*, 115 N.C. 811, 20 S.E. 729, 44 Am. St. Rep. 501, 28 L.R.A. 289 (1894), where a man standing in North Carolina shot and killed a man in Tennessee, and North Carolina refused to return the murderer because he had never been in Tennessee. In other respects the 1937 extradition law is substantially the same as the 1931 law. 15 N.C.L. Rev. 343, 344.

**§ 15-56. Duty of Governor as to fugitives from justice of other states.** — Subject to the provisions of this article, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this State. (1937, c. 273, s. 2.)

**Cross Reference.**—See also United States Constitution, Art. IV, § 2, cl. 1.

**§ 15-57. Form of demand for extradition.**—No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under § 15-60, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand. (1937, c. 273, s. 3.)

**§ 15-58. Governor may cause investigation to be made.** — When a demand shall be made upon the Governor of this State by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this State to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered. (1937, c. 273, s. 4.)

**§ 15-59. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.** — When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this State may agree with the executive authority of such other state for the extradition of such person



before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this State as soon as the prosecution in this State is terminated.

The Governor of this State may also surrender on demand of the executive authority of any other state any person in this State who is charged in the manner provided in § 15-77 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. (1937, c. 273, s. 5.)

**§ 15-60. Extradition of persons not present in demanding state at time of commission of crime.**—The Governor of this State may also surrender, on demand of the executive authority of any other state, any person in this State charged in such other state in the manner provided in § 15-57 with committing an act in this State, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this article not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom. (1937, c. 273, s. 6.)

**Cross Reference.**—As to criminal liability in this State for act injuring one in another, see § 15-132.

**§ 15-61. Issue of Governor's warrant of arrest; its recitals.**—If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the State seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. (1937, c. 273, s. 7.)

**§ 15-62. Manner and place of execution of warrant.**—Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the State, and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this article to the duly authorized agent of the demanding state. (1937, c. 273, s. 8.)

**§ 15-63. Authority of arresting officer.**—Every such peace officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. (1937, c. 273, s. 9.)

**Cross Reference.**—As to liability for refusing to assist, see § 14-224.

**§ 15-64. Rights of accused person; application for writ of habeas corpus.**—No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this State, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state. (1937, c. 273, s. 10.)

**Cross Reference.**—As to application for writ of habeas corpus, see § 17-3 et seq.

§ 15-65. **Penalty for noncompliance with preceding section.** — Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant, in wilful disobedience to § 15-64, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one thousand dollars (\$1,000.00) or be imprisoned not more than six months, or both. (1937, c. 273, s. 11.)

§ 15-66. **Confinement in jail when necessary.** — The officer or person executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this State with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: Provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this State. (1937, c. 273, s. 12.)

§ 15-67. **Arrest prior to requisition.**—Whenever any person within this State shall be charged on the oath of any credible person before any judge or magistrate of this State with the commission of any crime in any other state and, except in cases arising under § 15-60, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this State, setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state, and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under § 15-60, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this State, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this State, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. (1937, c. 273, s. 13.)

Where a justice of the peace of this State issues a warrant for the arrest of a person based upon an affidavit that such person was a fugitive from justice from another state, and the warrant is regular and valid, as provided by this section, in habeas corpus proceedings instituted prior to a hearing upon the warrant before the justice of the peace, an order remanding

the petitioner to the custody of the sheriff who had arrested petitioner is not error, but petitioner is entitled to a hearing before the justice of the peace before he is committed to await the issuance of an extradition warrant. *In re Mitchell*, 205 N.C. 788, 172 S.E. 350 (1934).

A person arrested upon a warrant of a justice of the peace of this State, issued



upon an affidavit that such person was a fugitive from justice from another state, as provided by this section, may not be lawfully delivered to the authorities of such other state until the Governor of this State

has honored a requisition for such person from the governor of such other state. In re Mitchell, 205 N.C. 788, 172 S.E. 350 (1934).

§ 15-68. **Arrest without a warrant.**—The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him under oath setting forth the ground for the arrest as in § 15-67; and thereafter his answer shall be heard as if he had been arrested on a warrant. (1937, c. 273, s. 14.)

§ 15-69. **Commitment to await requisition; bail.**—If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under § 15-60, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in § 15-70, or until he shall be legally discharged. (1937, c. 273, s. 15.)

§ 15-70. **Bail in certain cases; conditions of bond.**—Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this State may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the Governor of this State. (1937, c. 273, s. 16.)

§ 15-71. **Extension of time of commitment; adjournment.** — If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in § 15-70, but within a period not to exceed sixty days after the date of such new bond. (1937, c. 273, s. 17.)

§ 15-72. **Forfeiture of bail.**—If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this State. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings within this State. (1937, c. 273, s. 18.)

§ 15-73. **Persons under criminal prosecution in this State at time of requisition.**—If a criminal prosecution has been instituted against such person under the laws of this State and is still pending, the Governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this State. (1937, c. 273, s. 19.)

§ 15-74. **Guilt or innocence of accused, when inquired into.** — The guilt or innocence of the accused as to the crime of which he is charged may not



be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime. (1937, c. 273, s. 20.)

**§ 15-75. Governor may recall warrant or issue alias.**—The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. (1937, c. 273, s. 21.)

**§ 15-76. Fugitives from this State; duty of governors.** — Whenever the Governor of this State shall demand a person charged with a crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this State from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this State, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this State in which the offense was committed. (1937, c. 273, s. 22.)

**§ 15-77. Application for issuance of requisition; by whom made; contents.**—(a) When the return to this State of a person charged with crime in this State is required, the prosecuting attorney shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said prosecuting attorney, the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim.

(b) When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(c) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of State to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition. (1937, c. 273, s. 23.)

**§ 15-78. Costs and expenses.**—Subject to the requirements, restrictions and conditions hereinafter set forth in this section, if the crime shall be a felony,

the reimbursements for expenses shall be paid out of the State treasury on the certificate of the Governor and warrant of the Auditor, as provided by this section. In all other cases, such expenses or reimbursements shall be paid out of the county treasury of the county wherein the crime is alleged to have been committed according to such regulations as the board of county commissioners may promulgate. In all cases, the expenses, for which repayment or reimbursement may be claimed, shall consist of the reasonable and necessary travel expense and subsistence costs of the extradition agent or fugitive officer, as well as the fugitive, together with such legal fees as were paid to the officials of the State on whose Governor the requisition is made. The person or persons designated to return the fugitive shall not be allowed, paid or reimbursed for any expenses in connection with any requisition or extradition proceeding unless the expenses are itemized, the statement of same be sworn to under oath, and shall not then be paid or reimbursed unless a receipt is obtained showing the amount, the purpose for which said item or sum was expended, the place, date and to whom paid, and said receipt or receipts attached to said sworn statement and filed with the Governor. The Governor shall have the authority, upon investigation, to increase or decrease any item or expenses shown in said sworn statement, or to include items of expenses omitted by mistake or inadvertence. The decision or determination of the Governor as to the correct amount to be paid for such expenses or reimbursements shall be final. When it is deemed necessary for more than one agent, extradition agent, fugitive officer or person, to be designated to return a fugitive from another state to this State, the solicitor or prosecuting officer shall file with his written application to the Governor of this State an affidavit setting forth in detail the grounds or reasons why it is necessary to have more than one extradition agent, fugitive officer or person to be so designated. Among other things, and not by way of limitation, the affidavit shall set forth whether or not the alleged fugitive is a dangerous person, his previous criminal record if any, and any record of said fugitive on file with the Federal Bureau of Investigation or with the prison authorities of this State. As a further ground or reason for more than one extradition agent or fugitive officer to be designated, it may be shown in said affidavit the number of fugitives to be returned to this State and any other grounds or reasons for which more than one extradition agent or fugitive officer is desired. If the Governor finds or determines from his own investigation and from the information made available to him that more than one extradition agent or fugitive officer is necessary for the return of a fugitive or fugitives to this State, he may designate more than one extradition agent or fugitive officer for such purpose. All travel for which expenses or reimbursements are paid or allowed under this section shall be by the nearest, direct, convenient route of travel. If the extradition agent or agents or person or persons designated to return a fugitive or fugitives from another state to this State shall elect to travel by automobile, a sum not exceeding seven cents (7c) per mile may be allowed in lieu of all travel expense, and which shall be paid upon a basis of mileage for the complete trip. The Governor may promulgate executive orders, rules and regulations governing travel, forms of statements, receipts or any other matter or objective provided for in this section. The Governor may delegate any or all of the duties, powers and responsibilities conferred upon him by this section to any executive agent or executive clerk on his staff or in his office, and such executive agent or executive clerk, when properly authorized may perform any or all of the duties, powers and responsibilities conferred upon the Governor. Provided that if the fugitive from justice is an alleged felon, and he be returned without the service of extradition papers by the sheriff or the agent of the sheriff of the county in which the felony was alleged to have been committed, the expense of said return shall be borne by the State of North Carolina under the rules and regulations made and promulgated by the Governor of North Carolina or the executive agent or the executive clerk to whom



the said Governor may have delegated his duties under this section. (1937, c. 273, s. 24; 1953, c. 1203; 1955, c. 289.)

**Where defendant paid expenses of sheriff** in returning him to State without extradition, it was held error to order the State to pay such expenses of the sheriff under

this section. *State v. Patterson*, 224 N.C. 471, 31 S.E.2d 380 (1944), decided prior to 1953 and 1955 amendments.

**§ 15-79. Immunity from service of process in certain civil actions.**—A person brought into this State by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is being or has been returned until he has been convicted in the criminal proceeding or, if acquitted until he has had reasonable opportunity to return to the state from which he was extradited. (1937, c. 273, s. 25.)

**In General.**—Persons who are in this State as defendants in a criminal prosecution sequent to their arrest in another state and waiver of extradition, are immune to service of process in a civil action arising out of the same facts as the criminal proceeding. *Reverie Lingerie, Inc. v. McCain*, 258 N.C. 353, 128 S.E.2d 835 (1963).

**Defendant Who Voluntarily Came into State Is Not Immune.**—A defendant who was not arrested outside of North Carolina and therefore was not brought into this State by or after waiving extradition, but voluntarily came into North Carolina and posted bond for his appearance at the criminal term was not immune from civil process in an action growing out of the same facts as the criminal proceeding in which he was a defendant. *Reverie Lingerie, Inc. v. McCain*, 258 N.C. 353, 128 S.E.2d 835 (1963).

**A nonresident defendant** is not exempt from service of civil process while his presence in the State is in compliance with the conditions of a bail bond. *Hare v. Hare*, 228 N.C. 740, 46 S.E.2d 840 (1948).

A nonresident defendant in a criminal proceeding pending in the State is immune from personal service of process in a civil action arising out of the same facts as the criminal proceeding only when he is brought into the State by, or after waiver of extradition proceeding. By the same token, if such defendant be immune from personal service of such process only under those circumstances, his property within the State would be immune from attachment and garnishment only when so brought into the State by defendant. *White v. Ordille*, 229 N.C. 490, 50 S.E.2d 499 (1948).

**§ 15-80. Written waiver of extradition proceedings.**—Any person arrested in this State charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in §§ 15-61 and 15-62 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this State or a clerk of the superior court a writing which states that he consents to return to the demanding state: Provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge or clerk of superior court to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in § 15-64.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor of this State and filed therein. The judge or clerk of superior court shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: Provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties



of the officers of the demanding state or of this State. (1937, c. 273, s. 25a; 1959, c. 271.)

**§ 15-81. Non-waiver by this State.**—Nothing in this article contained shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this article which result in, or fail to result in, extradition be deemed a waiver by this State of any of its rights, privileges or jurisdiction in any way whatsoever. (1937, c. 273, s. 25b.)

**§ 15-82. No right of asylum; no immunity from other criminal prosecution while in this State.** — After a person has been brought back to this State by, or after waiver of, extradition proceedings, he may be tried in this State for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition. (1937, c. 273, s. 26.)

Quoted in *Hare v. Hare*, 228 N.C. 740, 46 S.E.2d 840 (1948).

Cited in *White v. Ordille*, 229 N.C. 490, 50 S.E.2d 499 (1948).

**§ 15-83. Interpretation.** — The provisions of this article shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it. (1937, c. 273, s. 27.)

**§ 15-84. Short title.**—This article may be cited as the Uniform Criminal Extradition Act. (1937, c. 273, s. 30.)

## ARTICLE 9.

### *Preliminary Examination.*

**§ 15-85. Waiver of examination.** — If any person arrested desires to waive examination and give bail, it is the duty of the officer making the arrest to take him before any magistrate of the county in which the offense is charged to have been committed, or before any judge of the Supreme or superior court. (1868-9, c. 178, subc. 3, ss. 7, 8; Code, ss. 1138, 1139; Rev., s. 3190; C. S., s. 4557.)

**Cross References.**—As to bail in criminal proceedings, see § 15-102 et seq. As to hearing by the coroner in lieu of other preliminary hearings, see § 152-10.

**This section and § 15-87 do not prescribe mandatory procedures** affecting the validity of a trial. *State v. Hargett*, 255 N.C. 412, 121 S.E.2d 589 (1961).

**A preliminary hearing is not an essential prerequisite to the finding of an indictment in this jurisdiction.** *State v. Hargett*, 255 N.C. 412, 121 S.E.2d 589 (1961).

It is proper to try the defendant upon a bill of indictment without a preliminary hearing. *State v. Hargett*, 255 N.C. 412, 121 S.E.2d 589 (1961).

**§ 15-86. Procedure, when justice has not final jurisdiction.** — In all cases where a justice of the peace has not final jurisdiction of the offense, he shall desist from any final determination of the action or complaint, and proceed as hereinafter provided. (1868-9, c. 178, subc. 4, s. 7; 1879, c. 302, s. 2; Code, s. 896; Rev., s. 3191; C. S., s. 4558.)

**Cross Reference.**—As to jurisdiction of a justice in criminal actions, see § 7-129 and notes.

**When Jurisdiction of Justice Ends.**—The justice has no jurisdiction of a case after

he has bound the defendant to court and taken his recognizance. *State v. Lucas*, 139 N.C. 567, 51 S.E. 1021 (1905).

Cited in *State v. Broadway*, 256 N.C. 608, 124 S.E.2d 568 (1962).

**§ 15-87. Duty of examining magistrate.**—The magistrate before whom any such person shall be brought shall proceed, as soon as may be, to examine the complainant and the witnesses produced in support of the prosecution on oath, in

the presence of the prisoner, in regard to the offense charged, and in regard to any other matters connected with such charge which such magistrate may deem pertinent. The defendant shall be allowed a reasonable time before the hearing begins in which to send for and advise with counsel. (1868-9, c. 178, subc. 3, s. 13; Code, ss. 1144, 1145; Rev., s. 3192; C. S., s. 4559.)

**This section and § 15-85 do not prescribe mandatory procedures** affecting the validity of a trial. *State v. Hargett*, 255 N.C. 412, 121 S.E.2d 589 (1961).

**Person Charged Must Be Present.** — There can be no examination in the absence of the person charged. *Lovick v. Atlantic Coast Line R.R.*, 129 N.C. 427, 40 S.E. 191 (1901).

**Rights of Accused.** — The present wise and beneficent policy of the law allows a

prisoner under arrest time for deliberation and an opportunity to obtain correct legal advice, so that the statements which he may make on an examination are made of his own free will and with full knowledge of the nature and consequences of his confessions. *State v. Matthews*, 66 N.C. 106 (1872).

**Cited in** *State v. Hackney*, 240 N.C. 230, 81 S.E.2d 778 (1954).

**§ 15-88. Testimony reduced to writing; right to counsel.**—The evidence given by the several witnesses examined shall be reduced to writing by the magistrate, or under his direction, and shall be signed by the witnesses respectively. If desired by the person arrested, his counsel shall be present during the examination of the complainant and the witnesses on the part of the prosecution, and during the examination of the prisoner; and the prisoner or his counsel shall be allowed to cross-examine the complainant and the witnesses for the prosecution. (1868-9, c. 178, subc. 3, ss. 14, 19; Code, ss. 1146, 1150; Rev., s. 3193; C. S., s. 4560.)

**Cross Reference.**—As to testimony being used as evidence, see § 15-100 and notes.

**Exact Words Not Required to Be Written.** — The magistrate is not required to write down the very words of the witness as they are uttered. It is sufficient if he puts down fully and accurately the testimony of the witness as he intends it upon the subject matter of inquiry. *State v. Bridgers*, 87 N.C. 562 (1882).

**Notes Not Conclusive.**—The notes of evidence made by a committing magistrate upon the hearing are not conclusive as to the testimony of witnesses examined. *State v. Hooper*, 151 N.C. 646, 65 S.E. 613 (1909).

**Magistrate Can Give Parol Testimony.**—

It is competent for a magistrate to state what a witness swore before him in regard to a homicide, although he afterwards committed the statement to writing. *State v. Adair*, 66 N.C. 298 (1872).

**Use of Written Statement on Trial.**—The written statement can only be referred to, to refresh his memory, and is properly treated as a memorandum, *State v. Adair*, 66 N.C. 298 (1872), unless the witness is dead, or too ill to be present, or insane, or has removed from the State at the instigation or connivance of the defendant or prosecutor. *State v. King*, 86 N.C. 603 (1882).

**§ 15-89. Prisoner examined; advised of rights.**—The magistrate shall then proceed to examine the prisoner in relation to the offense charged. Such examination shall not be on oath; and before it is commenced, the prisoner shall be informed by the magistrate of the charge made against him, and that he is at liberty to refuse to answer any question that may be put to him, and that his refusal to answer shall not be used to his prejudice in any stage of the proceedings. (1868-9, c. 178, subc. 3, ss. 14, 15; Code, ss. 1145, 1146; Rev., s. 3194; C. S., s. 4561.)

**Cross Reference.**—As to the right of a prisoner to testify as a witness, see § 8-54.

**Purpose of Section.**—It was intended by this section to safeguard the rights of the prisoner as guaranteed by the law, and to afford him every protection against imposition, oppression, or undue influence, so that what he may say in any investigation in regard to the accusation against him may

be entirely voluntary. *State v. Parker*, 132 N.C. 1014, 43 S.E. 830 (1903). For the accused, without the caution, might, before the magistrate, feel compelled to answer questions put to him, and such answers as he might make, might not be voluntary. *State v. Conrad*, 95 N.C. 666 (1886).

**Application of Section.**—The provisions of this section are applicable only to pre-

liminary judicial examinations. *State v. Grass*, 223 N.C. 31, 25 S.E.2d 193 (1943).

**Distinction between Examination under This Section and That under § 8-54.** —

There is a distinction between the statement made by a prisoner on his preliminary examination before a magistrate under this section, and his testimony given under § 8-54, as a witness on the trial of the cause. On the former, he is to be advised of his rights, the examination is not under oath, and, should it be taken contrary to the statute, it may not be used against him at the trial. On the latter, accused at his own request, but not otherwise, is competent but not compellable to testify and his testimony thus given is under oath and may be used at any subsequent stage of the prosecution. *State v. Farrell*, 223 N.C. 804, 28 S.E.2d 560 (1944); *State v. Sheffield*, 251 N.C. 309, 111 S.E.2d 195 (1959).

**Prisoner Must Not Be Sworn.**—It was the purpose and intent that the person under examination, who is accused of crime, should feel free to admit or deny his guilt, and the oath which is forbidden by statute deprives him of this perfect freedom. *State v. Parker*, 132 N.C. 1014, 43 S.E. 830 (1903).

**Section Extends to Coroner's Inquest.** — The reason of the section extends to an inquisition by a coroner. In this respect he is an examining magistrate. *State v. Matthews*, 66 N.C. 106 (1872).

**Caution to Prisoner Is Essential.**—This caution is not a mere matter of form; it is a substantial right, necessary for the protection of prisoners who are too poor to employ counsel and too ignorant to conduct their own defense. *State v. Rorie*, 74 N.C. 148 (1876).

This caution is an essential part of the proceedings, and must be given to the prisoner under arrest to make his examination admissible in evidence. Thus where a confession is made before the cautions required by the section were given it is inadmissible as evidence. *State v. Matthews*, 66 N.C. 106 (1872).

**Caution Applies to Whole Examination.** —The purpose of the section is, that the prisoner shall be advised by the magistrate of his right to refuse to answer all questions that may be put to him as to the charge made against him, without prejudice, during the whole examination, and not simply so much of it as applies to him personally. *State v. Conrad*, 95 N.C. 666 (1886).

**When Caution to Be Given.**—The commencement of the examination is properly, when, after the warrant of arrest is re-

turned executed, the accused is present before the magistrate, and the latter having called and noticed the matter of the charge, proceeds to read the warrant or state the substance of the charge orally. It is then the caution to the accused is due, and ought to be given, because, then, the magistrate has taken official notice of the charge and the accused, and what he does and says, and then the latter must take notice of the magistrate and be under his jurisdiction and control; then he is before the court and his examination is begun. *State v. Conrad*, 95 N.C. 666 (1886).

**It is not necessary to competency of an extrajudicial confession to a police officer that defendant be warned he is not compelled to answer.** *State v. Grier*, 203 N.C. 586, 166 S.E. 595 (1932).

In a prosecution for murder, where defendant confessed shortly after the homicide to officers, one of whom was the coroner, such confession is not inadmissible because defendant was not advised of his rights under this section. *State v. Grass*, 223 N.C. 31, 25 S.E.2d 193 (1943).

**Exact Words of Section Not Required.**

—It is not necessary that a committing magistrate at the commencement of the examination of a prisoner shall use the precise words of the section in giving the caution therein prescribed, but it is sufficient if there be a substantial compliance with the requirement of the section. *State v. Rogers*, 112 N.C. 874, 17 S.E. 297 (1893); *State v. DeGraff*, 113 N.C. 688, 18 S.E. 507 (1893); *State v. King*, 162 N.C. 580, 77 S.E. 301 (1913).

**Same—What Is Sufficient.** — Both the letter and spirit of the statute require that the defendant should be advised of his rights by the justice, to the effect that he is not required to testify; that he is at liberty to refuse to answer any question put to him, and that his refusal to answer shall not be used to his prejudice. *State v. Parker*, 132 N.C. 1014, 43 S.E. 830 (1903); *State v. Simpson*, 133 N.C. 676, 45 S.E. 567 (1903); *State v. Vaughan*, 156 N.C. 615, 71 S.E. 1089 (1911).

**Same—Insufficient Compliance.**—Where the prisoner was brought before the magistrate and he was told by that official that "he was charged with selling stolen corn, and that if he wanted to tell anything he could do so; but it was just as he chose." This was not sufficient compliance. *State v. Rorie*, 74 N.C. 148 (1876).

**Trial Judge Must Find Proper Caution.**

—Where the record of a committing magistrate merely states that the prisoner was cautioned and the trial court holds such admission competent, with no other evi-



dence before him except this statement, it is error, as the trial judge should have found as a fact whether the proper caution was given to the prisoner. *State v. Parker*, 132 N.C. 1014, 43 S.E. 830 (1903).

**Where Prisoner Examined as Witness at Own Request.**—Testimony given by a defendant when examined as a witness at his own request is admissible against him on another hearing or trial for the same or any

other offense, for such admissions and declarations do not come within either the language or the reason of this section. *State v. Ellis*, 97 N.C. 447, 2 S.E. 525 (1887); *State v. Hawkins*, 115 N.C. 712, 20 S.E. 623 (1894); *State v. Simpson*, 133 N.C. 676, 45 S.E. 567 (1903).

**Cited in** *State v. Dixon*, 215 N.C. 438, 2 S.E.2d 371 (1939).

**§ 15-90. Exclusion of witnesses at examination.**—The witnesses produced on the part either of the prisoner or of the prosecution shall not be present at the examination of the prisoner; and while any witness is under examination the magistrate may exclude from the place in which such examination is had all witnesses who have not been examined, and may cause the witnesses to be kept separate and prevented from conversing with each other until they shall have been examined. (1868-9, c. 178, subc. 3, s. 18; Code, s. 1149; Rev., s. 3195; C. S., s. 4562.)

**Cross Reference.**—As to exclusion of bystanders in trials for rape, see § 15-166.

**Judge Has Discretion to Exclude.**—Exclusion is a matter of which the presiding judge must judge, and except in cases of abuse of his discretion, such order is not

reviewable. *State v. Hodge*, 142 N.C. 676, 55 S.E. 791 (1906); *State v. Lowry*, 170 N.C. 730, 87 S.E. 62 (1915); *Lee v. Thornton*, 174 N.C. 288, 93 S.E. 788 (1917); *State v. Davis*, 175 N. C. 723, 95 S.E. 48 (1918).

**§ 15-91. Answers in writing, read to prisoner, signed by magistrate.**—The answer of the prisoner to the several interrogatories shall be reduced to writing by the magistrate, or under his direction. They shall be read to the prisoner, who may correct or add to them; and when made conformable to what he declares is the truth, shall be certified and signed by the magistrate. (1868-9, c. 178, subc. 3, s. 16; Code, s. 1147; Rev., s. 3196; C. S., s. 4563.)

**Cross Reference.**—As to testimony being used as evidence, see § 15-100 and notes.

**Seal Not Necessary.**—This section does

not require the examination of a committing magistrate to be certified under seal. *State v. Pressley*, 90 N.C. 730 (1884).

**§ 15-92. Witnesses for defendant examined.**—After the examination of the prisoner is complete, his witnesses, if he have any, shall be sworn and examined, and he may have the assistance of counsel in such examination. (1868-9, c. 178, subc. 3, s. 17; Code, s. 1148; Rev., s. 3197; C. S., s. 4564.)

**§ 15-93. Examination of prisoner not required in misdemeanors.**—Nothing contained in the preceding sections shall be construed to require any magistrate, before whom a prisoner charged with a misdemeanor shall be brought, to take the examination of such prisoner, except where such magistrate shall deem it material so to do, or where such examination shall be required by the prisoner. (1868-9, c. 178, subc. 3, s. 22; Code, s. 1153; Rev., s. 3198; C. S., s. 4565.)

**Cross Reference.**—As to the right of the prisoner to be examined as a witness, see § 8-54.

**§ 15-94. When prisoner discharged.**—If, upon examination of the whole matter, it shall appear to the magistrate either that no offense has been committed by any person or that there is no probable cause for charging the prisoner therewith, he shall discharge such prisoner. (1868-9, c. 178, subc. 3, s. 20; Code, s. 1151; Rev., s. 3199; C. S., s. 4566.)

**Cited in** *State v. Broadway*, 256 N.C. 608, 124 S.E.2d 568 (1962).

**§ 15-95. When prisoner held to answer charge.**—If it shall appear that an offense has been committed, and that there is probable cause to believe the prisoner to be guilty thereof, if the offense be bailable, and the prisoner offers sufficient bail, such bail shall be taken and the prisoner discharged; if no bail be offered, or the offense be not bailable, the prisoner shall be committed to prison. (1868-9, c. 178, subc. 3, ss. 21, 25; Code, ss. 1152, 1156; Rev., s. 3202; C. S., s. 4567.)

**Cross References.**—As to bail generally, see § 15-102 et seq. As to commitment, see § 15-125 et seq.

**When Jurisdiction of Justice Ends.** — Where a justice of the peace heard a warrant charging the defendant with an assault, with serious damage, and adjudged that the accused give bond for his appearance, and his bond was executed and accepted by the justice, the latter's power and jurisdiction ceased and his attempt to reverse his decision the next day and fine

the defendant was a nullity. *State v. Lucas*, 139 N.C. 567, 51 S.E. 1021 (1905).

It was intended most surely that when the justice had fully performed the duties required of him, his jurisdiction as to the case should be at an end. If he makes a mistake, it must be corrected elsewhere—not in his court. *State v. Lucas*, 139 N.C. 567, 51 S.E. 1021 (1905).

**Cited in** *State v. Broadway*, 256 N.C. 608, 124 S.E.2d 568 (1962).

**§ 15-96. Witnesses against prisoner recognized.**—The magistrate shall bind by recognizances the prosecutor and all the material witnesses against such prisoner to appear and testify at the next term of the court having jurisdiction for the county in which the offense is alleged to have been committed. (1868-9, c. 178, subc. 3, s. 21; Code, s. 1152; Rev., s. 3203; C. S., s. 4568.)

**§ 15-97. Witnesses required to give security for appearance.** — Whenever the magistrate is satisfied by the proof that there is good reason to believe that any such witness will not fulfill the conditions of the recognizance unless security be required, he may order the witness to enter into a recognizance with such sureties as he shall deem meet for his appearance at such court. (1868-9, c. 178, subc. 3, s. 23; Code, s. 1154; Rev., s. 3204; C. S., s. 4569.)

**Bond for Appearance before Justice Not Permitted.**—There is no statute which authorizes a justice of the peace or magistrate to require of a witness to give bond for his appearance before such justice or magistrate. *Lovick v. Atlantic Coast Line R.R.*, 129 N.C. 427, 40 S.E. 191 (1901).

And a justice of the peace, together with those advising him, who orders a witness to give a bond to appear before a justice, thereby are guilty of falsely imprisoning the witness. *Lovick v. Atlantic Coast Line R.R.*, 129 N.C. 427, 40 S.E. 191 (1901).

**§ 15-98. Investigation in case of lynching.**—Whenever the solicitor of any judicial district ascertains that the crime of lynching has been committed in any county in his judicial district, it is his duty to go to such county at the earliest possible moment, and at once institute proceedings for the investigation of the crime before the coroner of the county, some judge of the superior court, or justice of the peace, and for the apprehension of the offender. In the performance of this duty he shall cause to be issued subpoenas or other process to compel the attendance of witnesses and examine such witnesses on oath as to their knowledge or information touching the crime being investigated. In all cases where, upon preliminary investigation, it appears probable that any person is guilty of the crime charged, it shall be the duty of the coroner, judge or justice before whom the case is heard to bind such person, with good security, for his appearance at the next ensuing term of the superior or criminal court of some county adjoining the county in which the crime was committed for trial, and in default of bail to commit him to the jail of such adjoining county for safekeeping, and all necessary witnesses shall be recognized to appear at such term as witnesses for the State. (1893, c. 461, s. 2; Rev., s. 3200; C. S., s. 4570.)

**Cross References.**—As to venue in case of lynching, see § 15-128. As to cost of investigating lynchings, see § 6-43.

**Editor's Note.**—Venue in case of lynching is discussed in *State v. Lewis*, 142 N.C. 626, 55 S.E. 600 (1906).

**§ 15-99. Witnesses in lynching not privileged.** — In all investigations before a justice of the peace, coroner, judge, grand jury, or courts and jury, on the trial of the cause, as authorized by § 15-98 or under existing law, no person shall be excused from testifying touching his knowledge or information in regard to the offense being investigated, upon the ground that his answer might tend to subject him to prosecution, pains or penalties, or that his evidence might tend to criminate himself; but no discovery made by such witness upon any such examination shall be used against him in any court or in any penal or criminal prosecution, and he shall, when so examined as a witness for the State, be altogether pardoned of any and all participation in any crime arising under the provisions of § 15-98, or under existing law, concerning which he is required to testify. (1893, c. 461, s. 5; Rev., ss. 1638, 3201; C. S., s. 4571.)

**Editor's Note.**—See note under § 8-55, which provides for compelling witnesses to testify in certain criminal investigations and extends immunity to those thus testifying.

For a general discussion of the limits to self-incrimination, see 15 N.C.L. Rev. 229.

**Witness Pardoned Though Testimony Does Not Incriminate.** — Legislation in "abolition or oblivion of the offense" specified, applicable to all in a given class, is valid and therefore, when under this section, the defendant was summoned, sworn, and examined by and for the State touching an alleged lynching under investiga-

tion by the court, he shall be altogether pardoned of any and all participation therein under the statute or existing law, whether the evidence elicited from him tends to incriminate him or not. *State v. Bowman*, 145 N.C. 452, 59 S.E. 74 (1907).

**Plea of Pardon as Motion to Quash.** — It seems that for the purpose of an appeal, the plea of pardon may be considered and treated as a motion to quash, and so be brought within the direct provisions of § 15-179. *State v. Bowman*, 145 N.C. 452, 59 S.E. 74 (1907).

**§ 15-100. Proceedings certified to court; used as evidence.** — All examinations and recognizances taken pursuant to the provisions of this chapter shall be certified by the magistrate taking the same to the court at which the witnesses are bound to appear, within twenty days after the taking of such examinations and recognizances: Provided, that any criminal case tried within twenty days before the sitting of criminal court shall be returned on Saturdays before the court convenes. The examinations taken and subscribed as herein prescribed may be used as evidence before the grand jury, and on the trial of the accused, provided he was present at the taking thereof and had an opportunity to hear the same and to cross-examine the disposing witness, if such witness be dead or so ill as not to be able to travel, or by procurement or connivance of the defendant has removed from the State, or is of unsound mind. (1868-9, c. 178, subc. 3, s. 26; Code, s. 1157; Rev., s. 3205; 1913, c. 24; C. S., s. 4572.)

**In General.**—Our various statutes relating to the introduction of testimony at the second trial of evidence introduced in the preliminary hearing of a criminal action do not affect the common-law rule, but they are extensions of its principle, making it only necessary when the statutory provisions as to the making of the written record, its correction, signature by the witness, etc., have been complied with to sufficiently identify the record for its admission as evidence upon the second trial. *State v. Maynard*, 184 N.C. 653, 113 S.E. 682 (1922).

The effect of this section and §§ 15-88 and 15-91 is to extend the common-law principle, and their purpose was to make these preliminary examinations, when properly taken, certified and filed, in the nature of an official record, to be read in evidence

on mere identification, and they do not and were not intended to restrict or entrench upon the common-law principle that evidence of this kind, when repeated by a witness under proper oath, and who can and does swear that his statements contain the substance of the testimony as given by the dead or absent witness, shall be received in evidence on the second trial. And well considered authority is to the effect that stenographers' notes, when the stenographer who took them goes on the stand and swears that they are accurate and correctly portray the evidence as given by the witness, come well within the principle. *State v. Ham*, 224 N.C. 128, 29 S.E.2d 449 (1944).

**Examinations Must Accord with Preceding Section.** — Where the examinations are offered as substantive evidence bearing upon the criminal charge, they are only



admissible under this section, when taken according to the requirements of the preceding section. *State v. Pierce*, 91 N.C. 606 (1884); *State v. Jordan*, 110 N.C. 491, 14 S.E. 752 (1892).

**Reason for Witness' Absence Must Appear.**—In order to use the examination as substantive evidence it must be shown that witness is absent because of one of reasons given in this section. *State v. Pierce*, 91 N.C. 606 (1884).

No foundation has been laid for the introduction of the evidence of a witness who merely does not respond to the obligations of the subpoena, and is simply proved to have "run away," and not that any effort has been made to secure his presence. *State v. King*, 86 N.C. 603 (1882).

**§ 15-101. Penalty for failing to return.**—If any magistrate shall refuse or neglect to return to the proper court any such examination or recognizance by him taken, he may be compelled by rule of court forthwith to return the same, and in case of disobedience of such rule, may be proceeded against by attachment as for contempt of court as provided by law. (1868-9, c. 178, subc. 3, s. 27; Code, s. 1158; Rev., s. 3206; C. S., s. 4573.)

## ARTICLE 10.

### *Bail.*

**Cross References.**—As to constitutional provisions against excessive bail, see N.C. Const., Art. I, § 14 and U.S. Const., Amend. VIII. As to authority of the arresting officer to allow bail, see § 15-47. As to arrest and bail in civil cases, see § 1-409 et seq.

As to bail after habeas corpus proceeding, see §§ 17-35 and 17-36. As to undertakings of bail bondsmen and regulation of bail bondsmen and runners, see §§ 85A-1 to 85A-34.

**§ 15-102. Officers authorized to take bail, before imprisonment.**—Officers before whom person charged with crime, but who have not been committed to prison by an authorized magistrate, may be brought, have power to fix and take bail as follows:

- (1) Any justice of the Supreme Court, or a judge of a superior court, in all cases.
- (2) Any clerk of the superior court, any justice of the peace, any chief magistrate of any incorporated city or town, or any person authorized to issue warrants of arrest, in all cases of misdemeanor, and in all cases of felony not capital. (1868-9, c. 178, subc. 3, s. 29; 1871-2, c. 37; Code, s. 1160; Rev., s. 3209; C. S., s. 4574; 1951, c. 85; 1963, c. 1099, s. 1.)

**Editor's Note.**—In *State v. Herndon*, 107 N.C. 934, 12 S.E. 268 (1890), the meaning and effect of this and the following section are discussed in the dissenting opinion.

The 1963 amendment inserted the words "fix and" in the opening paragraph and inserted in subdivision (2) the reference to "any person authorized to issue warrants of arrest."

**Accused May Deposit Cash in Lieu of Bond.**—The law contemplates that a defendant in a criminal prosecution may give

**When Parol Evidence Admissible.**—On the trial in the superior court it is competent for purposes of contradiction, to offer parol evidence as to what a witness testified to upon such preliminary examination. *State v. Wright*, 75 N.C. 439 (1876); *State v. Lyon*, 81 N.C. 600 (1879); *State v. Roberts*, 81 N.C. 605 (1879); *State v. Hooper*, 151 N.C. 646, 65 S.E. 613 (1909).

To authorize the introduction of parol evidence as to the confession of a prisoner before an examining magistrate, it must appear affirmatively that there was no examination recorded as required by law. *State v. Parrish*, 44 N.C. 239 (1853); *State v. Matthews*, 66 N.C. 106 (1872).

security for his appearance to answer to the charge and the Supreme Court has held that the fact that defendant of his own volition, chooses to deposit the amount of the bond required in cash is not a violation of the statute, but a compliance with its spirit and meaning. *White v. Ordille*, 229 N.C. 490, 50 S.E.2d 499 (1948), citing *State v. Mitchell*, 151 N.C. 716, 66 S.E. 202 (1909).

Cash deposited by accused as security for his appearance remains his property

subject to the conditions of a recognizance, the justice of the peace becoming the custodian of the cash for the benefit of the State only insofar as the debt of accused to the State is concerned. If defendant fails to perform the conditions, the deposit will be subject to forfeiture. But if he performs the conditions, the cash deposit would be returnable to him. This is a right which he may enforce against the custodian of the deposit. *White v. Ordille*, 229 N.C. 490, 50 S.E.2d 499 (1948).

**And Is Liable to Attachment.** — A de-

fendant in a criminal prosecution in a justice of the peace court of the State of North Carolina, who is a nonresident of the State, and who voluntarily deposits with the justice of the peace cash in lieu of bond for his appearance before the justice of the peace for a preliminary hearing, has such property right and interest in the deposit as is liable to attachment and garnishment at the instance of his creditor pending such preliminary hearing. *White v. Ordille*, 229 N.C. 490, 50 S.E.2d 499 (1948).

**§ 15-103. Officers authorized to take bail, after imprisonment.** — Any justice of the Supreme Court or any judge of a superior court has power to fix and take bail for persons committed to prison charged with crime in all cases; any justice of the peace, any chief magistrate of any incorporated city or town, or any person authorized to issue warrants of arrest has the same power in all cases where the punishment is not capital. (1868-9, c. 178, subc. 3, s. 30; Code, s. 1161, Rev., s. 3210; C. S., s. 4575; 1963, c. 1099, s. 2.)

**Editor's Note.**—The 1963 amendment inserted the words "fix and take" near the beginning of the section. It also made the

section applicable to "any person authorized to issue warrants of arrest."

**§ 15-104. Recognizance filed with the clerk.**—Whenever a prisoner is bailed by any officer under § 15-103, such officer shall immediately cause the recognizance taken by him to be filed with the clerk of the superior court of the county to which the prisoner is recognized. (1868-9, c. 178, subc. 3, s. 31; Code, s. 1162; Rev., s. 3211; C. S., s. 4576.)

**§ 15-105. Bail allowed on preliminary examination.**—If the offense charged in the warrant be not punishable with death, the magistrate may take from the person so arrested a recognizance with sufficient sureties for his appearance at the next term of the court having jurisdiction, to be held in the county where the offense is alleged to have been committed. (1868-9, c. 178, subc. 3, s. 8; 1871-2, c. 37, s. 1; Code, s. 1139; Rev., s. 3207; C. S., s. 4577.)

**Cross References.**—As to bail for persons arrested for extradition, see § 15-76. As to bail upon appeal from a superior to the Supreme Court, see §§ 15-182 and 15-183.

**Recognizance Explained.**—The taking of a recognizance consists in making and attesting a memorandum of the acknowledgment of a debt due the State, and of the conditions on which it is to be defeated. *State v. Edney*, 60 N.C. 463 (1864); *State v. Houston*, 74 N.C. 549 (1876).

A recognizance is a debt of record acknowledged before a court of competent jurisdiction, with condition to do some particular act. *State v. Smith*, 66 N.C. 620 (1872); *State v. White*, 164 N.C. 408, 79 S.E. 297 (1913).

A recognizance in a criminal proceeding is an acknowledgment by the defendant that he is indebted to the State in an amount fixed by the court, conditioned upon his personal appearance at a time and place specified by the court to answer the

charge against him, to stand and abide the judgment of the court and not to depart without leave of the court. *White v. Ordille*, 229 N.C. 490, 50 S.E.2d 499 (1948).

**Same—A Matter of Record.**—A recognizance is a matter of record, and can only be discharged by a record or something of equal solemnity. *State v. Moody*, 69 N.C. 529 (1873).

**Same—Need Not Be Executed by Parties.**—A recognizance need not be executed by the parties, but is simply acknowledged by them, and a minute of the acknowledgment is entered by the court. *State v. Edney*, 60 N.C. 463 (1864); *State v. White*, 164 N.C. 408, 79 S.E. 297 (1913).

**Effect of a Recognizance.** — A recognizance binds the sureties for the continued appearance of their principal, from day to day, during the term and at all stages of the proceeding, until he is finally discharged by the court, either for term or without day. He must answer its calls at all times

and submit to its judgment. *State v. Schenck*, 138 N.C. 560, 49 S.E. 917 (1905).

**Bond with Conditions Is Satisfactory.** — *State v. Jones*, 100 N.C. 438, 6 S.E. 655 (1888).  
A bond with conditions, signed and sealed

**§ 15-106. Duty of magistrate granting bail.** — Any magistrate taking bail shall certify on the warrant the fact of his having let the defendant to bail, and shall deliver the same, together with the recognizance taken by him, to the officer or other person having charge of the prisoner, who shall deliver the same without unnecessary delay to the clerk of the court in which the prisoner has been recognized to appear. (1868-9, c. 178, subc. 3, s. 9; Code, s. 1140; Rev., s. 3212; C. S., s. 4578.)

**§ 15-107. Sheriff or deputy may take bail.** — When any sheriff or his deputy arrests the body of any person, in consequence of the writ of *capias* issued to him by the clerk of a court of record on an indictment found, the sheriff or deputy, if the crime is bailable, shall recognize the offender, and take sufficient bail in the nature of a recognizance for his appearing at the next succeeding court of the county where he ought to answer, which recognizance shall be returned with the *capias*; and the sheriff shall in no case become bail himself.

No sheriff, deputy sheriff, constable, jailer or assistant jailer or the wife of any sheriff, deputy sheriff, constable, jailer or assistant jailer shall in any case become bail for any prisoner for money or property; nor shall any sheriff, deputy sheriff, constable, jailer or assistant jailer, or their wives become bail as agents for any bonding company or professional bondsmen. Any violation of this paragraph shall constitute a misdemeanor punishable by a fine or by imprisonment in the discretion of the court, or by both such fine and imprisonment; provided that the provisions of this paragraph shall not apply to Caswell, Currituck, Dare, Granville, Greene, Halifax, Hertford, Hyde, Lenoir, Martin, Moore, Nash, Pamlico, Perquimans, Person, Pitt, Rockingham, Stokes, Transylvania and Warren counties. (1797, c. 474, s. 4, P. R.; R. C., c. 35, s. 11; Code, s. 1180; Rev., s. 3208; C. S., s. 4579; 1939, c. 47; 1955, c. 194.)

**Local Modification.**—Haywood: 1945, c. 875. **Cross Reference.**—As to attorney becoming bail, see Appx. II, Part (2), Rule 2.

**§ 15-107.1. Justice of the peace or spouse, secretary, stenographer or employee not to become bail or agent for bonding company, etc.**—No justice of the peace of this State, or the spouse or secretary, stenographer or employee of any justice of the peace, shall in any case become bail for any prisoner for money or property. No justice of the peace, or the spouse or secretary, stenographer or employee of any justice of the peace, shall become bail or agents for any bonding company or professional bondsmen. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, in the discretion of the court. (1957, c. 782; 1963, c. 118.)

**Editor's Note.**—The 1963 amendment inserted the words "or secretary, stenographer or employee" at two places in the section.

**§ 15-108. Sheriff may take bail of prisoner in custody.**—If any person for want of bail shall be lawfully committed to jail at any time before final judgment, the sheriff, or other officer having him in custody, may take sufficient justified bail and discharge him; and the bail bond shall be regarded, in every respect, as other bail bonds, and shall be returned and sued on in like manner; and the officer taking it shall make special return thereof, with the bond, at the first court which is held after it is taken. (R. C., c. 11, s. 8; Code, s. 1232; Rev., s. 3228; C. S., s. 4580.)

**§ 15-109. Bail on continuance before a justice.** — Upon the continuance of any criminal action returned before any justice of the peace for trial, in



which the justice is authorized to take bail on a finding of probable cause or in which he has final jurisdiction, it is the duty of the justice of the peace to take bond for his appearance, payable to the State, on the same being tendered by the accused, with such surety as in his opinion will be sufficient to insure the appearance of the accused for trial at a time and place mentioned in the bond. (1889, c. 133; Rev., s. 3213; C. S., s. 4581.)

**Cross Reference.** — As to mortgage in lieu of security for appearance, see § 109-25.

**Section Gives a New Remedy.** — Before this section was passed a justice of the peace had no power to allow a party accused of an offense of which he had not final jurisdiction to give bail during the

postponement of the examination. If any delay in the examination was necessary, the accused was to be kept in the custody of the sheriff or other officer of the law until the examination was resumed. *State v. Jones*, 100 N.C. 438, 6 S.E. 655 (1888); *State v. Jenkins*, 121 N.C. 637, 28 S.E. 413 (1897).

## ARTICLE 11.

### *Forfeiture of Bail.*

**§ 15-110. In recognizance to keep the peace.** — Every person who shall have entered into a recognizance to keep the peace shall appear according to the obligation thereof; and if he fail to appear the court shall forfeit his recognizance and order it to be prosecuted, in the manner provided by law, unless reasonable excuse for his default be given. (1868-9, c. 178, subc. 2, s. 10; Code, s. 1225; Rev., s. 3214; C. S., s. 4582.)

**Cross References.** — As to recognizance, see also notes under § 15-105. As to undertakings of bail bondsmen and regulation of bail bondsmen and runners, see §§ 85A-1 to 85A-34.

**Recognizance Binds to Three Things.** — It is said by the highest authority that a recognizance (or bail bond) in general binds to three things: (1) To appear and answer either to a specified charge or to such matters as may be objected; (2) to stand and abide the judgment of the court; and (3) not to depart without leave of the court; and that each of these particulars are distinct and independent. *State v. Schenck*, 138 N.C. 560, 49 S.E. 917 (1905); *State v. Eure*, 172 N.C. 874, 89 S.E. 788 (1916).

**When Time and Place Specified.** — If the recognizance specify time and place the defendant cannot be held to be in default for not appearing at some other time or place. *State v. Houston*, 74 N.C. 174 (1876).

Thus a recognizance, conditioned that the defendant appear at the courthouse in C, on the eighth Monday after the fourth Monday in March, is not forfeited by the defendant's failure to appear on 22 February. *State v. Houston*, 74 N.C. 174 (1876).

**Same—Effect of Subsequent Law.** — A recognizance conditioned for the appearance of a party at one day, is not forfeited by his failure to appear at another day, to

which the holding of the court was changed by a law passed after the taking of the recognizance, the law containing no provision that recognizances should be returned and parties appear on that day. *State v. Melton*, 44 N.C. 426 (1853).

**When Appearance at Next Term Specified.** — A recognizance for the appearance of the defendant at the next term of the court to be held for a given county is valid and binds the defendant to appear at the next term and at the courthouse, although neither time nor place be specifically named; because every one knows, or is presumed to know, the time and place of holding the court. *State v. Houston*, 74 N.C. 174 (1876).

**Same—If Term Not Held.** — A defendant bound over to answer a criminal charge at a regular term of the superior court, which term is not held in consequence of the absence of the judge, is required to attend at an intervening special term subsequently appointed and held. *State v. Horton*, 123 N.C. 695, 31 S.E. 218 (1898).

**Continuance Does Not Release.** — The continuance of a criminal case does not release the recognizance given for the appearance of the defendant. *State v. Morgan*, 136 N.C. 593, 48 S.E. 604 (1904).

**Proceedings When Recognizance Broken.** — Where the condition of a recognizance is broken it is competent for the justice to declare the same to be forfeited

and order it to be prosecuted in the court having jurisdiction of the penal sum. *State v. Oates*, 88 N.C. 668 (1883).

**Defendant Must Appear until Discharged.** — An appearance bond by its terms, and under the uniform ruling of the court, requires that the defendant appear term after term until he is discharged on a verdict of acquittal or by order of the court. An appearance bond is in lieu of custody in jail, in which case the defendant could not be released until discharged by order of the court. *State v. Eure*, 172 N.C. 874, 89 S.E. 788 (1916).

§ 15-111. **When recognizance deemed broken.**—No recognizance taken under this chapter shall be deemed to be broken except in the failure of the principal in such recognizance to appear and answer according to the obligation thereof, unless such principal be convicted of some offense amounting in judgment of law to a breach of such recognizance. (1868-9, c. 178, subc. 2, s. 12; Code, s. 1277; Rev., s. 3215; C. S., s. 4583.)

**Surety Not Relieved.**—The liability of a surety upon an appearance bond is a continuing one until discharged by renewal of bond or production and surrender of principal. (See §§ 15-122, 15-123.) He is not released by the principal being drunk

**Agreement by Solicitor Will Not Relieve.**—An agreement by a solicitor for the State to discharge a defendant if he would become a State's witness against codefendant, will not relieve such defendant from a forfeited recognizance. *State v. Moody*, 69 N.C. 529 (1873).

**Failure to Sign Warrant.**—It is immaterial to the validity of an appearance bond given by defendant before the court and in custodia legis that the warrant for his arrest, in due form, was, inadvertently, not signed by the recorder. *State v. Mitchell*, 151 N.C. 716, 66 S.E. 202 (1909).

and under arrest when his case was called in court and continued, and by the principal having since become a fugitive from justice under charge of a different offense. *State v. Holt*, 145 N.C. 450, 59 S.E. 64 (1907).

§ 15-112. **Recognizance prosecuted.**—Whenever evidence of such conviction shall be produced in the court in which the recognizance is filed, it shall be the duty of such court to order the recognizance to be prosecuted, and the solicitor shall cause the proper proceedings to be thereupon taken. (1868-9, c. 178, subc. 2, s. 13; Code, s. 1228; Rev., s. 3216; C. S., s. 4584.)

**Independent Proceeding Unnecessary.**—The judgment that the recognizance has been forfeited must be entered in the court, and in the cause, in which said recognizance was filed and it is not required that the prosecution for the forfeiture of such recognizance shall be taken by an independent proceeding. *State v. Sanders*, 153 N.C. 624, 69 S.E. 272 (1910).

**Proceedings When Forfeiture Is Moved for.**—When the forfeiture of a recognizance is moved for, if all the matters are of record, the judge decides without the intervention of a jury. But when the answer raises an issue of fact, the defendant is entitled to have the matter passed upon by a jury. *State v. Sanders*, 153 N.C. 624, 69 S.E. 272 (1910), and cases cited.

**Entry of Forfeiture Not Traversed by Answer to Scire Facias.** — The entry of the forfeiture of a recognition in a criminal case cannot be contradicted or traversed by an answer or a plea to a scire facias issued to enforce the forfeiture. *State v. Morgan*, 136 N.C. 593, 48 S.E. 604 (1904).

**Effect of Answer to Scire Facias.** — Where the recognizance in a criminal case is entered on the records of the court as forfeited, and scire facias is issued to enforce the forfeiture, an answer denying the truth of the record, though informal, is equivalent to a motion to set aside the entry, when that appears to have been the intention of the defendants. *State v. Morgan*, 136 N.C. 593, 48 S.E. 604 (1904).

§ 15-113. **Notice of judgment nisi before execution.**—No execution shall issue upon a forfeited recognizance or to collect a fine imposed nisi until a notice has issued against the person who has forfeited his recognizance or upon whom the fine has been imposed, and his sureties. The clerk shall issue a writ of scire facias directed to the process officer of the court and of the county of residence of the defendant and of his sureties or bail, under seal if out of his county, with copies of same for each, which writ shall be returnable, the next term

of court, commencing thirty (30) days after the service of same, as herein provided. The defendant and the sureties may file answer as in civil actions, prior to the return date and same shall stand for trial at said term. Provided, where the defendant deposits cash in lieu of bond or recognizance, upon his failure to appear for trial in accordance with the requirements of such cash bond then judgment nisi on the cash bond shall be entered and the defendant shall be charged with legal notice thereof without issuance or service of a scire facias or other notice and after thirty days or at the next term, whichever is later, judgment absolute forfeiting and condemning the cash bond shall be entered if the defendant then fails to appear or upon appearance fails to show legal excuse or other satisfactory explanation of his nonappearance at the term when judgment nisi was entered. (1777, c. 115, s. 48, P. R.; R. C., c. 35, s. 43; Code, s. 1208; Rev., s. 3217; C. S., s. 4585; 1953, c. 177; 1957, c. 332.)

**Local Modification.** — Forsyth: 1935, c. 83.

**Editor's Note.** — For comment on the 1953 amendment, see 31 N.C.L. Rev. 404 (1953).

**Notice Must Be Given.** — This section has made it imperative, that before suing out execution on a forfeited recognizance, a scire facias shall issue, and judgment be had thereon. *State v. Mills*, 19 N.C. 552 (1837).

**Object of Notice.** — The object of a scire facias is to notify the cognizor to show cause, if any he have, wherefore the cognizee should not have execution of the same thereby acknowledged. *State v. Mills*, 19 N.C. 552 (1837).

**Judgment against Surety on Appearance Bond.** — An appearance bond is a debt of record conditioned to be void upon the appearance of defendant, and while judgment absolute may not be entered upon a forfeited recognizance except upon a sci. fa., the object of the sci. fa. is merely to give notice of an opportunity to show cause why the cognizee should not have execution acknowledged, and the surety being a party to the recognizance and his liability being primary, direct and equal with that of the principal, judgment absolute may be had against the surety on the sci. fa. before service of the sci. fa. upon the principal. *Tar Heel Bond Co. v. Krider*, 218 N.C. 316, 11 S.E.2d 291 (1940), followed in *State v. Brown*, 218 N.C. 368, 11 S.E.2d 294 (1940).

**§ 15-114. What notice must contain.** — When any recognizance, acknowledged by a principal and sureties, shall be forfeited by two or more of the recognizers, the notice issued thereon shall be jointly against them all, designating which of them are principals and which sureties, and when they are bound in different sums, stating the amount forfeited by each one, and the clerk shall have no greater fee on such notice than is due when it is issued against one defendant. (1812, c. 836, s. 1, P. R.; R. C., c. 35, s. 44; Code, s. 1209; Rev., s. 3218; C. S., s. 4586.)

**§ 15-115. Service of notice.**—All notices issuing upon forfeited recognizances shall be executed by leaving a copy with each of the defendants, or at his present place of abode. And in case he cannot be found, and has no known place of abode, and the matter be returned, then a notice shall issue, and on the like return the same shall be deemed duly served. (1812, c. 836, s. 2, P. R.; R. C., c. 35, s. 45; Code, s. 1210; Rev., s. 3219; C. S., s. 4587.)

**Cited in** *Tar Heel Bond Co. v. Krider*, 218 N.C. 361, 11 S.E.2d 291 (1940).

**§ 15-116. Judges may remit forfeited recognizances.**—The judges of the superior courts may hear and determine the petition of all persons who shall conceive they merit relief on their recognizances forfeited; and may lessen, or absolutely remit, the same, and do all and anything therein as they shall deem just and right and consistent with the welfare of the State and the persons praying such relief, as well before as after final judgment entered and execution awarded. (1788, c. 292, s. 1, P. R.; R. C., c. 35, s. 38; Code, s. 1205; Rev., s. 3220; C. S., s. 4588.)

**Trial Judge Has Discretion.**—The power given by this section is a matter of judi-

cial discretion in the judges below, which cannot be reviewed except for some error



in a matter of law or legal inference. *State v. Moody*, 74 N.C. 73 (1876); *State v. Morgan*, 136 N.C. 593, 48 S.E. 604 (1904).

Whether a judgment nisi will be made absolute, or whether it will be stricken out, either upon condition or otherwise, rests in the discretion of the judge of the superior court. *State v. Clarke*, 222 N.C. 744, 24 S.E.2d 619 (1943); *State v. Wiggins*, 228 N.C. 76, 44 S.E.2d 471 (1947).

**Court May Remit Penalty without Setting Aside Forfeiture.** — Where a motion is made to set aside the entry of forfeiture of a recognizance, its refusal does not prevent the court from reducing or remitting the penalty. *State v. Morgan*, 136 N.C. 593, 48 S.E. 604 (1904).

**Petition after Final Judgment.**—A surety on a bail bond may, under this section, present a petition for relief to the judge of the superior court, notwithstanding that a final judgment has been rendered. *State v. Bradsher*, 189 N.C. 401, 127 S.E. 349 (1925); *State v. Dew*, 240 N.C. 595, 83 S.E.2d 482 (1954).

Where judgment absolute has been entered against the surety on an appearance bond, the surety is entitled upon the later apprehension and delivery of the defendant to the authorities of that county for trial, to be heard under the provisions of this section upon its motion to modify or vacate the judgment absolute. *State v. Dew*, 240 N.C. 595, 83 S.E.2d 482 (1954).

The superior courts have authority, under this section, to lessen or remit forfeited recognizances, upon the petition of the party aggrieved, either before or after final judgment. *State v. Moody*, 74 N.C. 73 (1876).

**Solicitor Has No Vested Right to Fee.** — Under this section the solicitor has no vested right to his fee under an absolute judgment upon a forfeited recognizance which was subsequently set aside by the court in the exercise of his discretionary power. *State v. King*, 143 N.C. 677, 57 S.E. 516 (1907).

**Injunction to Restrain Enforcement of Execution.**—A motion by the surety asking that the forfeiture theretofore entered up-

on the appearance bond be stricken out for that defendant had been subsequently arrested under a *capias* is addressed to the sound discretion of the court in the exercise of its power to remit the forfeiture, and does not serve to stay execution on the judgment entered against the surety upon the *sci. fa.*, and therefore the court, while the motion is pending, may hear and determine the surety's application for injunction to restrain enforcement of the execution issued on the judgment. The remedy for a reduction or remission of the forfeiture is by application under this section. *Tar Heel Bond Co. v. Krider*, 218 N.C. 361, 11 S.E.2d 291 (1940), followed in *State v. Brown*, 218 N.C. 368, 11 S.E.2d 294 (1940).

**Arrest Does Not Discharge Forfeiture of Appearance Bond.** — The arrest of defendant in a criminal proceeding upon a *capias* and his trial and conviction does not discharge the original forfeiture of his appearance bond, and judgment absolute against the surety may be entered upon the *sci. fa.* after defendant has been arrested under the *capias*. Section 15-122 has no application, since in such case the defendant is not arrested and surrendered by the surety, and further, even if the statute were applicable, it provides that surrender by the bail after recognizance is forfeited does not discharge the bail, but is merely addressed to the discretionary power of the court to reduce or remit the forfeiture. *Tar Heel Bond Co. v. Krider*, 218 N.C. 361, 11 S.E.2d 291 (1940), followed in *State v. Brown*, 218 N.C. 368, 11 S.E.2d 294 (1940).

Where the surety's answer to a *scire facias* amounts to nothing more than a plea for additional time, without allegation of facts disclosing excusable neglect or constituting a legal defense or appealing to the conscience and sense of fair play, the surety is not entitled to a hearing under this section as a matter of right and judgment absolute against the surety is proper. *State v. Dew*, 240 N.C. 595, 83 S.E.2d 482 (1954).

§ 15-117. **Money refunded by clerk.**—The clerk of the superior court, on the remission of any forfeited recognizance which has been paid into his office, shall refund the same, or so much thereof as shall be remitted. (1795, c. 442, s. 1, P. R.; R. C., c. 35, s. 39; Code, s. 1206; Rev., s. 3221; C. S., s. 4589.)

§ 15-118. **Money refunded by treasurer.**—If the money has been paid to the county treasurer, he shall refund it to the person entitled, on his producing an attested copy of the record from the clerk of the court, certifying that such recognizance has been remitted or lessened, signed with his own proper name,

with the seal of the court affixed thereto. (1795, c. 442, s. 2, P. R.; R. C., c. 35, s. 40; Code, s. 1207; Rev., s. 3222; C. S., s. 4590.)

**§ 15-119. Forfeiture of bond before justice.** — On the failure of the accused to appear at the time and place mentioned in any bond taken by any justice of the peace for a continuance of any cause pending before him, and answer the charge, or, having appeared, on his departing the court without leave thereof first had and obtained, it shall be the duty of the justice of the peace then presiding to enter judgment nisi against the principal and his sureties in the bond for the amount mentioned therein, if the sum does not exceed the sum of two hundred dollars; and immediately issue notice to the principal and the sureties in the bond, giving ten days time, specifying time and place, to appear and show cause, if any they have, why the judgment nisi shall not be made final. (1889, c. 133, s. 2; Rev., s. 3223; C. S., s. 4591.)

**§ 15-120. Judgment final, rendered and enforced.**—If the defendant shall fail to appear and show satisfactory reasons for not complying with the provisions of the bond, it shall then be the duty of the justice of the peace to render a final judgment thereon for the amount of the same, and immediately make and transmit to the clerk of the superior court a transcript thereof, which shall be entered upon the judgment docket of the court, and the clerk shall issue execution on the final judgment against the principal and his sureties for the collection of the amount thereof as in other judgments in behalf of the State. (1889, c. 133, s. 3; Rev., s. 3224; C. S., s. 4592.)

**§ 15-121. Forfeiture of bond over two hundred dollars before justice.**—If the bond shall exceed the sum of two hundred dollars, and the accused shall fail to appear as therein provided to answer the charge, or, having appeared, shall depart the court without leave first had and obtained, it shall be the duty of the justice to have the accused called, and enter upon the bond that the defendant was called and failed to answer, and immediately return the original papers in the case, together with the bond, to the clerk of the court having jurisdiction to try such action, who shall immediately enter the case upon the criminal docket of his court and enter judgment nisi for the amount of the bond, and issue notice to the accused and his sureties to appear at the next term to show cause why the judgment should not be made final and proceeded in as other cases of forfeited bonds in behalf of the State in such court. The entry on the bond by the justice of the peace shall be prima facie evidence that the principal therein had been called and failed to answer. Nothing in this section shall be so construed as to prevent justices of the peace from remitting the penalty of the bond or the right of appeal from the justice of the peace to the superior court by the defendant or his surety. (1889, c. 133, s. 4; Rev., s. 3225; C. S., s. 4593.)

**§ 15-122. Right of bail to surrender principal.** — The bail shall have liberty, at any time before execution awarded against him, to surrender to the court from which the process issued, or to the sheriff having such process to return, during the session, or in the recess of such court, the principal, in discharge of himself; and such bail shall, at any time before such execution awarded, have full power and authority to arrest the body of his principal, and secure him until he shall have an opportunity to surrender him to the sheriff or court as aforesaid; and the sheriff is hereby required to receive such surrender, and hold the body of the defendant in custody as if bail had never been given: Provided, that in criminal proceedings the surrender by the bail, after the recognizance has been forfeited, shall not have the effect to discharge the bail, but the forfeiture may be remitted in the manner provided for. Provided, further, that if the defendant is in legal custody or imprisoned in the State of North Carolina or in any other state or territory of the United States at the time such defendant is bonded to appear in court, then the hearing on the writ of scire facias shall be continued for



not less than ninety (90) days in order to give the surety an opportunity to produce the defendant. (1777, c. 115, s. 20, P. R.; 1848, c. 7; R. C., c. 11, s. 5; Code, s. 1230; Rev., s. 3226; C. S., s. 4594; 1955, c. 873.)

**In General.** — The conviction does not, by virtue of its own force, put the defendant in the custody of the court or of the sheriff. This is done, in our practice at least, by an order from the court, given of its own motion or on application of the solicitor, and the court, when it passes judgment upon a defendant and he appeals, can direct that he be not taken into custody immediately, but be permitted to find security for the costs of his appeal and for his appearance at the next term, and if he fails afterwards to appear, when called during the term, and perfect his appeal and give the necessary security for his appearance, or in default thereof to surrender himself in execution of the judgment, he may be called and his forfeiture entered. *State v. Schenck*, 138 N.C. 560, 49 S.E. 917 (1905).

**Compliance with Section Protects Surety.** — Where a defendant surrenders his principal in open court in discharge of himself as bail, he is acting in the clear exercise of an undoubted legal right. Under this section the entry of the fact made upon the records of the court was therefore proper, and the court could not by their subsequent action, deprive the defendant of the benefit of it. *Underwood v. McLaurin*, 49 N.C. 17 (1856).

**When Condition of Bond Performed.** — The condition of a bail bond is not performed by the appearance, conviction and sentence of the defendant. The conviction does not, by virtue of its own force, put the defendant in the custody of the court or of the sheriff, but to exonerate the surety the defendant must submit to such punishment as shall be adjudged. *State v. Schenck*, 138 N.C. 560, 49 S.E. 917 (1905).

**Discharge of Bail.** — The arrest of defendant in a criminal proceeding upon a capias and his trial and conviction does not discharge the original forfeiture of his

appearance bond, and judgment absolute against the surety may be entered upon the sci. fa. after defendant has been arrested under the capias. This section has no application, since in such case the defendant is not arrested and surrendered by the surety, and further, even if the statute were applicable, it provides that surrender by the bail after recognizance is forfeited does not discharge the bail, but is merely addressed to the discretionary power of the court to reduce or remit the forfeiture. *Tar Heel Bond Co. v. Krider*, 218 N.C. 361, 11 S.E.2d 291 (1940), followed in *State v. Brown*, 218 N.C. 368, 11 S.E.2d 294 (1940).

**Bail Not Exonerated During Defendant's Detention in Prison on Other Charges.** — Upon the failure of defendant to appear when his case was called, judgment nisi was entered and sci. fa. and capias issued. Upon the hearing of the sci. fa., the surety showed that at the time of the call of the case defendant was incarcerated in another county of this State on other charges, that upon the subsequent trial in such other county defendant was sentenced to imprisonment, and that the surety had secured capias and filed same with the officials of the State's prison so that defendant would be surrendered to the court to stand trial upon the expiration of his sentence. Held: Notwithstanding that § 1-433 relates only to bonds executed in arrest and bail proceedings, the bail will not be exonerated during defendant's detention, since only the State and not the surety can produce the body of defendant, and judgment absolute against the surety should be stricken out and hearing on the sci. fa. continued until the surety has had opportunity to produce defendant after his release from prison. *State v. Eller*, 218 N.C. 365, 11 S.E.2d 295 (1940), decided prior to 1955 amendment.

**§ 15-123. New bail given upon surrender; liability of sheriff.** — Any person surrendered in the manner specified in § 15-122 shall have liberty, at any time before final judgment against him, to give bail; and in case of such surrender, the sheriff shall take the bail bond or recognizance to the succeeding court; and in case the sheriff shall release such person without bail, or the bail returned be held insufficient, on exception taken, the same term to which such bail bond shall be returned, and allowed by the court, the sheriff, having due notice thereof in criminal cases, shall forfeit to the State the sum of one hundred dollars, to be recovered on motion in like manner as forfeitures for not returning process, and be subject to be indicted for misdemeanor in office; and it shall be the duty of the prosecuting officer to collect the forfeiture; and, in case of a release, the sheriff shall be liable for an escape, and may be prosecuted and punished as provided for



in the chapter entitled Criminal Law. (1827, c. 40; R. C., c. 11, s. 6; Code, s. 1231; Rev., s. 3227; C. S., s. 4595.)

**Cross References.** — As to criminal liability for an escape, see § 14-239. As to recovery of the penalty, see § 162-14 and annotation thereto.

**§ 15-124. Defenses open to bail.**—Every matter which would entitle the principal to be discharged from arrest may be pleaded by the bail in exoneration of his liability. (R. C., c. 11, s. 9; Code, s. 1233; Rev., s. 3229; C. S., s. 4596.)

## ARTICLE 12.

### *Commitment to Prison.*

**§ 15-125. Order of commitment.**—Every commitment to prison of a person charged with crime shall state:

- (1) The name of the person charged.
- (2) The character of the offense with which he is charged.
- (3) The name and office of the magistrate committing him.
- (4) The manner in which he may be discharged; if upon giving recognizance or bail, the amount of the recognizance, the condition on the performance of which it shall be discharged, and the persons or magistrate before whom the bail may justify.
- (5) The court before which the prisoner shall be sent for trial. (1868-9, c. 178, subc. 3, s. 32; Code, s. 1163; Rev., s. 3230; C. S., s. 4597.)

**Cross Reference.** — As to order of commitment after judgment by a justice, see § 15-159.

**Verbal Order Invalid.** — A verbal order of a justice of the peace sending a prisoner to jail, whether made before or after the examination on the warrant, is not a sufficient authority for the officer to whom the order is given. *State v. James*, 78 N.C. 455 (1878).

**§ 15-126. Commitment to county jail.**—All persons committed to prison before conviction shall be committed to the jail of the county in which the examination is had, or to that of the county in which the offense is charged to have been committed: Provided, if the jails of these counties are unsafe, or injurious to the health of prisoners, the committing magistrate may commit to the jail of any other convenient county. And every sheriff or jailer to whose jail any person shall be committed by any court or magistrate of competent jurisdiction shall receive such prisoner and give a receipt for him, and be bound for his safekeeping as prescribed by law. (1868-9, c. 178, subc. 2, s. 33; Code, s. 1164; Rev., s. 3231; C. S., s. 4598.)

**§ 15-127. Commitment of witnesses.**—If any witness required to enter into a recognizance, either with or without sureties, shall refuse to comply with such order, it shall be the duty of such magistrate to commit him to prison until he shall comply with such order, or be otherwise discharged according to law. (1868-9, c. 178, subc. 3, s. 24; Code, s. 1155; Rev., s. 3232; C. S., s. 4599.)

**Cross Reference.**—As to when witnesses are required to give security for appearance, see § 15-97.

## ARTICLE 13.

### *Venue.*

**§ 15-128. In case of lynching.**—The superior court of any county which adjoins the county in which the crime of lynching shall be committed shall have full and complete jurisdiction over the crime and the offender to the same extent as if the crime had been committed in the bounds of such adjoining county; and whenever the solicitor of the district has information of the commission of such a crime, it shall be his duty to furnish such information to the grand juries of

all adjoining counties to the one in which the crime was committed from time to time until the offenders are brought to justice. (1893, c. 461, s. 4; Rev., s. 3233; C. S., s. 4600.)

**Cross References.**—As to venue in civil cases, see § 1-76 et seq. As to removal for fair trial, see § 1-84 et seq.

**Section Constitutional.** — This section is a constitutional exercise of legislative power. *State v. Lewis*, 142 N.C. 626, 55 S.E. 600 (1906); *State v. Rumble*, 178 N.C. 717, 100 S.E. 622 (1919).

**Purpose of Section.** — Owing to the prejudice or sympathy which in cases of lynching usually and naturally pervades the county where that offense is committed, the General Assembly, upon grounds

of public policy, deemed it wise to transfer the investigation of the charge to the grand jury of an adjoining county. *State v. Lewis*, 142 N.C. 626, 55 S.E. 600 (1906).

**Bill Need Not Be Found in County Where Offense Committed.**—In an indictment for lynching it was error to quash the bill on the ground that it appeared on the face of the bill that the offense charged was not committed in the county in which the bill was found, but in an adjoining county. *State v. Lewis*, 142 N.C. 626, 55 S.E. 600 (1906).

**§ 15-129. In offenses on waters dividing counties.**—When any offense is committed on any water, or watercourse whether at high or low water, which water or watercourse, or the sides or shores thereof, divides counties, such offense may be dealt with, inquired of, tried and determined, and punished at the discretion of the court, in either of the two counties which may be nearest to the place where the offense was committed. (R. C., c. 35, s. 24; Code, s. 1193; Rev., s. 3234; C. S., s. 4601.)

**Cross Reference.**—As to venue of civil offenses committed on waters, see § 1-77.

**§ 15-130. Assault in one county, death in another.**—In all cases of felonious homicide when the assault has been made in one county within the State, and the person assaulted dies in any other county thereof, the offender shall be indicted and punished for the crime in the county wherein the assault was made. (1831, c. 22, s. 1; R. C., c. 35, s. 27; Code, s. 1196; Rev., s. 3235; C. S., s. 4602.)

**No New Offense Created by Section.**—This section received a judicial construction in *State v. Dunkley*, 25 N.C. 116 (1842), and it was held that it did not create any new offense, but merely removed a difficulty which existed as to the place of the trial. *State v. Hall*, 114 N.C. 909, 19 S.E. 602 (1894).

This section and the following were part of chapter 22 of the Public Laws 1831 and hence this construction applies equally to the following section.—Ed. Note.

**For meaning of "assault,"** see note under following section.

**§ 15-131. Assault in this State, death in another.** — In all cases of felonious homicide, when the assault has been made within this State, and the person assaulted dies without the limits thereof, the offender shall be indicted and punished for the crime in the county where the assault was made, in the same manner, to all intents and purposes, as if the person assaulted had died within the limits of this State. (1831, c. 22, s. 2; R. C., c. 35, s. 28; Code, s. 1197; Rev., s. 3236; C. S., s. 4603.)

**Section Is Valid.** — The validity of sections similar to this seems to be undisputed, and indeed it has been held in many jurisdictions that such legislation is but in affirmance of the common law. *State v. Hall*, 114 N.C. 909, 19 S.E. 602 (1894).

**No New Offense Created by Section.**—See note to § 15-130.

**Meaning of "Assault."** — The assault mentioned in this section and the preceding section evidently means not a mere attempt, but such an injury inflicted in this

State as results in death in another state. *State v. Hall*, 114 N.C. 909, 19 S.E. 602 (1894).

**Acts Causing Death Must Take Place in State.** — This section plainly contemplates that every part of the offense, except the death, must have occurred in this State. *State v. Hall*, 114 N.C. 909, 19 S.E. 602 (1894).

**Shooting Person in Adjoining State.** — See § 15-132 and note thereto.

**§ 15-132. Person in this State injuring one in another.**—If any person, being in this State, unlawfully and willfully puts in motion a force from the effect of which any person is injured while in another state, the person so setting such force in motion shall be guilty of the same offense in this State as he would be if the effect had taken place within this State. (1895, c. 169; Rev., s. 3237; C. S., s. 4604.)

**Editor's Note.**—This section was passed in 1895 as a result of the decision in *State v. Hall*, 114 N.C. 909, 19 S.E. 602 (1894). In that case the defendants while in North Carolina shot across the State line and killed a person in Tennessee and being indicted for murder in North Carolina it was

held that they were not guilty of the crime charged in the absence of a statute like the present. Section 15-131 was discussed and held not applicable since the stroke producing death was given not in North Carolina but in Tennessee.

**§ 15-133. In county where death occurs.**—If a mortal wound is given or other violence or injury inflicted or poison is administered on the high seas or land, either within or without the limits of this State, by means whereof death ensues in any county thereof, the offense may be prosecuted and punished in the county where the death happens. (1891, c. 68; Rev., s. 3238; C. S., s. 4605.)

**Section Constitutional.** — This section is inflicted mortal wounds elsewhere. *State v. Caldwell*, 115 N.C. 794, 20 S.E. 523 (1894).

**§ 15-134. Improper venue met by plea in abatement; procedure.**—Because the boundaries of many counties are either undetermined or unknown, by reason whereof high offenses go unpunished; therefore, for the more effectual prosecution of offenses committed on land near the boundaries of counties, in the prosecution of all offenses it shall be deemed and taken as true that the offense was committed in the county in which by the indictment it is alleged to have taken place, unless the defendant shall deny the same by plea in abatement, the truth whereof shall be duly verified on oath or otherwise both as to substance and fact, wherein shall be set forth the proper county in which the supposed offense, if any, was committed; whereupon the court may, on motion of the State, commit the defendant, who may enter into recognizance, as in other cases, to answer the offense in the county averred by his plea to be the proper county; and, on his prosecution in that county, it shall be deemed, conclusively, to be the proper county. But if the State, upon the plea aforesaid, will join issue, and the matter be found for the defendant, he shall be required to enter into recognizance as in other cases to answer the offense in the county averred by his plea to be the proper county, provided the offense be bailable; and, if not bailable, he shall be committed for trial in the county; and, if it be found for the State, the court in all offenses or misdemeanors shall proceed to pronounce judgment against the defendant, as upon conviction; and, in all cases of felony, the defendant shall be at liberty to plead to the indictment, and be tried on his plea of not guilty. (R. C., c. 35, s. 25; Code, s. 1194; Rev., s. 3239; C. S., s. 4606.)

**Cross References.**—As to venue in indictment for receiving stolen goods, see § 14-71. As to venue in case of bribery of players in athletic contests, see § 14-378. As to venue in trial of an accessory, see §§ 14-5 and 14-7. As to venue in cases of bigamy, see § 14-183. As to sale and delivery of intoxicating liquors, see § 18-9. As to offenses by officers of State institutions, see § 143-116. As to venue in cases of bastardy, see § 49-5.

**Purpose of Section.** — This section was evidently intended to provide relief in difficulties originating in doubt entertained

in good faith as to the county in which the offense was committed, and should not be construed to modify the common law beyond the reasonable scope of its manifest purpose. *State v. Mitchell*, 202 N.C. 439, 163 S.E. 581 (1932).

**Power of Legislature.**—Venue is under the control of the legislature. *State v. Woodward*, 123 N.C. 710, 31 S.E. 219 (1898).

**Broad Terms.** — This section is very broad in its terms. *State v. Outerbridge*, 82 N.C. 618 (1880).

**Old Rule Reversed.** — It reverses the



rule which seems to have obtained on the trial of criminal cases before its enactment. *State v. Lytle*, 117 N.C. 799, 23 S.E. 476 (1895).

**Applies to All Crimes.**—In felonies, as in misdemeanors, the objection can only be taken by plea in abatement. *State v. Outerbridge*, 82 N.C. 618 (1880).

**Same—Committed within State.**—The offenses referred to in this section are those committed within the borders of the State, in violation of the laws of the State, for our courts cannot take cognizance of the violation of the criminal laws of other states; and would have no right to recognize offenders to appear before their judicial tribunals. *State v. Mitchell*, 83 N.C. 674 (1880).

**Laws Regulating Jurisdiction Not a Part of Offense.**—Laws conferring, with drawing or limiting jurisdiction over pre-existing common-law offenses do not become a constituent part of the offenses to which they apply. *State v. Williamson*, 81 N.C. 540 (1879); *State v. Lewis*, 142 N.C. 626, 55 S.E. 600 (1906).

**Crime Deemed to Have Taken Place Where Alleged.**—Under this section, a criminal offense is deemed to have taken place in the county in which the indictment charges it had occurred, unless the defendant deny the same by the plea in abatement. *State v. Allen*, 107 N.C. 805, 11 S.E. 1016 (1890); *State v. Oliver*, 186 N.C. 329, 119 S.E. 370 (1923).

Where there is no challenge to the indictment prior to a plea of guilty, under this section the offense is deemed to have been committed in the county alleged in the indictment. *State v. McKeon*, 223 N.C. 404, 26 S.E.2d 914 (1943).

**Averment of Venue in Indictment.**—In an indictment for murder, the offence must be charged in the body of the bill, to have been committed within the district, over which the court has jurisdiction; it is not sufficient that the caption names the district. *State v. Adams*, 1 N.C. 56 (1793).

But the want of an averment of a proper and perfect venue is not fatal to a bill of indictment. *State v. Williamson*, 81 N.C. 540 (1879).

**The crime of offering a bribe to a juror is committed in the county where the offer is communicated to the juror, and the proper venue is the county in which the juror was serving and in which the defendant's offer was communicated to him by his wife, although defendant communicated with the juror's kinsmen and wife in**

the county of their residence. *State v. Noiland*, 204 N.C. 329, 168 S.E. 412 (1933).

**Objection to Venue Waived.**—Objection to venue is waived unless objection is taken in apt time by plea in abatement. *State v. Lytle*, 117 N.C. 799, 23 S.E. 476 (1895); *State v. Woodward*, 123 N.C. 710, 31 S.E. 219 (1898); *State v. Holder*, 133 N.C. 709, 45 S.E. 862 (1903).

Thus where a prisoner is charged with killing the deceased in the county in which the indictment is found, the State need not prove that the offense was committed in that county. Such allegation is to be taken as true unless the prisoner denies the same by plea in abatement. *State v. Outerbridge*, 82 N.C. 618 (1880).

**Demurrer to Evidence Improper Remedy.**—Under this section, an objection to venue must be taken by plea in abatement, and a demurrer to the evidence on this ground was properly overruled. *State v. Burton*, 138 N.C. 575, 50 S.E. 214 (1905).

**Plea in Abatement.**—An indictment charging that defendant did feloniously embezzle certain certificates of deposit in the county in which the prosecution is instituted, held not subject to defendant's plea in abatement on the ground that the certificates of deposit were issued by a bank in another county and that such other county was the proper venue of the prosecution, since the indictment charges the embezzlement of the certificates of deposit and not the proceeds of the certificates. *State v. Shore*, 206 N.C. 743, 175 S.E. 116 (1934).

**What Must Be Stated in Plea in Abatement.**—In pleas in abatement the facts upon which the plea rests must be stated, and present matters which will defeat the further prosecution of the present action, if proven or admitted. *Emry v. Chappell*, 148 N.C. 327, 62 S.E. 411 (1908).

**Jurisdiction of Person Acquired by Consent.**—While the court's jurisdiction of the subject matter of a criminal offense may not be acquired with the defendant's consent, it is otherwise as to the jurisdiction of his person; and where he asks and obtains a continuance of the action against him, he waives the court's want of jurisdiction of his person, and thereafter a plea in abatement comes too late. *State v. Oliver*, 186 N.C. 329, 119 S.E. 370 (1923).

**Where Motion to Quash Indictment Was Correctly Denied.**—Defendant moved to quash the indictment for receiving stolen goods on the ground that the evidence showed that the property, if stolen, was stolen in another county, and, if received by defendant, was received by him

in a third county. It was held that the motion to quash was correctly denied since, under this section, the crime is presumed to have been committed in the county laid in the bill of indictment unless defendant aptly enters a plea in abatement. *State v. Ray*, 209 N.C. 772, 184 S.E. 836 (1936).

**§ 15-135. Removal of indictment with consent of defendant; pleas.**—Whenever an indictment, charging the commission of a capital or other felony, is returned a true bill, the judge holding the court in which such indictment is found shall have the power, with the written consent of the defendant or defendants charged in said bill, to remove such indictment for trial to some adjacent county prior to the arraignment or plea of the defendant or defendants in such indictment, without the presence in person of the defendant or defendants, and upon such removal the pleas of the defendant or defendants may be entered in such adjacent county. (1921, c. 12, s. 1; C. S., s. 4606(a).)

**§ 15-136. Jurisdiction of grand jury.**—Upon the removal of any indictment under § 15-135, if it shall be found that there is any defect in such indictment, the grand jury of the county to which the same is removed for trial shall have as full and ample jurisdiction and power to find another indictment for the same offense as would the grand jury of the county from which the indictment was removed. (1921, c. 12, s. 2; C. S., s. 4606(b).)

#### ARTICLE 14.

##### *Presentment.*

**§ 15-137. No arrest or trial on presentment.**—No person shall be arrested on a presentment of the grand jury, or put on trial before any court, but on indictment found by the grand jury, unless otherwise provided by law. (1797, c. 474, s. 3, P. R.; R. C., c. 35, s. 6; 1879, c. 12; Code, s. 1175; Rev., s. 3240; C. S., s. 4607.)

**Cross References.**—As to exception to grand jurors, see § 9-26 and notes. As to the indictment, see § 15-140 et seq. As to constitutional provisions, see N. C. Const., Art. I, § 12 and U. S. Const., Amend. V.

**Purpose and Effect of Section.**—The experience of early days proved the practice of trying criminal cases upon the presentments of grand jurors to be wholly impracticable. As a consequence, the General Assembly of 1797 outlawed the practice by a statute, which has been retained to this day in slightly changed phraseology, and which now appears in this section. Since the adoption of the act of 1797, a presentment is regarded as nothing more than an instruction by the grand jury to the public prosecuting attorney for framing a bill of indictment for submission to them. *State v. Thomas*, 236 N.C. 454, 73 S.E.2d 283 (1952).

**Person Charged with Misdemeanor Cannot Be Tried Initially in Superior Court Except upon Indictment.**—Under this section and N. C. Const., Art. I, § 12, a person charged with the commission of a misdemeanor cannot be tried initially in the

superior court except upon an indictment found by a grand jury, unless he waives indictment in accordance with regulations prescribed by the legislature. *State v. Norman*, 237 N.C. 205, 74 S.E.2d 602 (1953).

**Applied in** *State v. Johnson*, 247 N.C. 240, 100 S.E.2d 494 (1957).

**Cited in** *State v. Ritter*, 199 N.C. 116, 154 S.E. 62 (1930).

**Trial in the superior court upon the original warrant** is a nullity where there has been no conviction by an inferior court having jurisdiction. *State v. Evans*, 262 N.C. 492, 137 S.E.2d 811 (1964).

**Original and Derivative Jurisdiction Distinguished.**—On appeal from the Superior Court of Craven County, from conviction of the unlawful possession of intoxicants, where the record showed that defendant was bound over to the County Court of Craven County with no record of his having been tried in that court or that there was any appeal therefrom, the superior court was without jurisdiction, and upon motion of the Attorney General, the appeal was properly dismissed. *State v. Patterson*, 222 N.C. 179, 22 S.E.2d 267 (1942).

**Objections to Grand Jury.**—In *State v. Sharp*, 110 N.C. 604, 14 S.E. 504 (1892), where there is a full discussion of objec-

tions to the competency of a grand jury, it is held that the fact that a son of the prosecutor was a member of the grand jury did not vitiate the indictment, though he had actively participated in finding the bill. *State v. Pitt*, 166 N.C. 268, 80 S.E. 1060 (1914).

**Where Foreman Interested in Prosecution.**—A motion to quash a bill of indictment on the ground that the foreman of the grand jury was interested in the prosecution will be denied when it appears that the foreman took no part in passing upon the indictment and signed the bill under the direction of the grand jury and re-

turned it in open court. *State v. Pitt*, 166 N.C. 268, 80 S.E. 1060 (1914).

**Remedy When Grand Jury Defective.**—

If there be a defect in the accusing body, it is the right of the party indicted, by plea of abatement or by motion to quash, to avail himself of such defect; but it is required to be exercised at the earliest opportunity after bill found, which must be upon the arraignment when the party is first called upon to answer. *State v. Haywood*, 73 N.C. 437 (1875); *State v. Grifrice*, 74 N.C. 316 (1876); *State v. Baldwin*, 80 N.C. 390 (1879).

§ 15-138. **Names of witnesses indorsed on presentment.** — When a presentment shall be made of any offense by a grand jury, upon the knowledge of any of their body, or upon the testimony of witnesses, the names of such grand jurors and witnesses shall be indorsed thereon. (1797, c. 474, s. 2, P. R.; R. C., c. 35, s. 7; Code, s. 1176; Rev., s. 3241; C. S., s. 4608.)

**Failure to Mark Names of Witnesses on Bill.**—Section 9-27 providing that the foreman of the grand jury shall mark on the indictment the names of the witnesses sworn and examined before the jury is

directory merely, and the omission of the foreman to comply therewith is no ground for quashing the bill, where the proof is that the witnesses were sworn. *State v. Hines*, 84 N.C. 810 (1881).

§ 15-139. **Subpoena for witnesses on presentment.** — In issuing subpoenas for witnesses whose names are indorsed on presentments made by the grand jury, the clerk of the court shall name therein the first Tuesday of the term of court as the time for such witnesses to appear and give evidence. And no clerk shall issue a subpoena for any such witness to appear on Monday, except upon written order of the solicitor of the district. (1913, c. 168; C. S., s. 4609.)

## ARTICLE 15.

### *Indictment.*

§ 15-140. **Waiver of indictment in misdemeanor cases.**—In any criminal action in the superior courts where the offense charged is a misdemeanor, the defendant may waive the finding and return into court of a bill of indictment. If the defendant pleads not guilty, the prosecution shall be on a written information, signed by the solicitor, which information shall contain as full and complete a statement of the accusation as would be required in an indictment. No waiver of a bill of indictment shall be allowed by the court unless by the consent of the defendant's counsel in such action who shall be one either employed by the defendant to defend him in the action or one appointed by the court to examine into the defendant's case and report as to the same to the court. The provisions of this section shall not apply to any case heard in the superior court on an appeal from an inferior court. (1907, c. 71; C. S., s. 4610; 1951, c. 726, s. 1.)

**Section Constitutional.** — This section, authorizing the waiver of an indictment in the superior court by the defendant bound over from an inferior court, is constitutional and valid. Constitution, Art. IV, § 13. *State v. Jones*, 181 N.C. 543, 106 S.E. 827 (1921).

**Trial in the superior court upon the original warrant** is a nullity where there has been no conviction by an inferior court

having jurisdiction. *State v. Evans*, 262 N.C. 492, 137 S.E.2d 811 (1964).

**A plea of guilty waives any defect in a warrant** charging a misdemeanor. *State v. Daughtry*, 236 N.C. 316, 72 S.E.2d 658 (1952).

**A plea of nolo contendere waives any irregularity in a warrant** for a misdemeanor. *State v. Tripp*, 236 N.C. 320, 72 S.E.2d 660 (1952).



**Applied** in *State v. Searcy*, 251 N.C. 320, 111 S.E.2d 190 (1959).

**Quoted** in *State v. Thomas*, 236 N.C. 454, 73 S.E.2d 283 (1952).

**Cited** in *State v. Finch*, 218 N.C. 511, 11

S.E.2d 547 (1940); *State v. Alston*, 236 N.C. 299, 72 S.E.2d 686 (1952); *State v. Jernigan*, 255 N.C. 732, 122 S.E.2d 711 (1961).

**§ 15-140.1. Waiver of indictment in noncapital felony cases.**—In any criminal action in the superior courts where the offense charged is a felony, but not one for which the punishment may be death, the defendant may waive the finding and return into court of a bill of indictment when represented by counsel and when both the defendant and his counsel sign a written waiver of indictment. Where the finding and return into court of a bill of indictment charging the commission of a felony is waived by the defendant, the prosecution shall be on an information signed by the solicitor. The information shall contain as full and complete a statement of the accusation as would be required in an indictment. The written waiver by the defendant and his counsel shall appear on the face of the information. Such counsel shall be one either employed by the defendant to defend him in the action or one appointed by the court to examine into the defendant's case and report as to the same to the court. (1951, c. 726, s. 2.)

**Prerequisites for Waiver.** — Under this section a defendant can waive a bill of indictment in a felony case only when represented by counsel and when both the defendant and his counsel sign a written waiver of indictment. *State v. Hayes*, 261 N.C. 648, 135 S.E.2d 653 (1964).

**"Represented by Counsel."**—The provision that a defendant can waive a bill of indictment in a felony case only when represented by counsel, and when both defendant and his counsel sign a written

waiver of indictment, presupposes counsel selected and employed by the defendant himself or assigned to him by the judge, and certainly does not include counsel assigned by the prosecuting attorney. *State v. Hayes*, 261 N.C. 648, 135 S.E.2d 653 (1964).

**Applied** in *State v. Hardison*, 257 N.C. 661, 127 S.E.2d 244 (1962).

**Quoted** in *State v. Thomas*, 236 N.C. 454, 73 S.E.2d 283 (1952).

**§ 15-140.2. Withdrawal of waiver of indictment.** — Waiver of indictment may not be withdrawn except with the approval of the presiding judge. (1951, c. 726, s. 3.)

**§ 15-141. Bills returned by foreman except in capital cases.**—Grand juries shall return all bills of indictment in open court through their acting foreman, except in capital felonies, when it shall be necessary for the entire grand jury, or a majority of them, to return their bills of indictment in open court in a body. (1889, c. 29; Rev., s. 3242; C. S., s. 4611.)

**Indictment to Be Returned in Open Court.**—It is the returning of the bill or indictment, publicly, in open court and its being there recorded, that makes it effectual. *State v. Cox*, 28 N.C. 440 (1846).

**Indictment Need Not Be Signed.** — It has been often held that an indictment need not necessarily be signed by any one. *State v. Cox*, 28 N.C. 440 (1846); *State v. Mace*, 86 N.C. 668 (1882); *State v. Pitt*, 166 N.C. 268, 80 S.E. 1060 (1914).

No endorsement by the foreman or otherwise is essential to the validity of an indictment, which has been duly returned into court by the grand jury under this section, and entered upon its records. *State v. Avant*, 202 N.C. 680, 163 S.E. 806 (1932).

**Cited** in *State v. Stephenson*, 247 N.C. 232, 100 S.E.2d 326 (1957).

**§ 15-142. Substance of judicial proceedings set forth.**—In every indictment, information, or impeachment in which, by the common law, it may be necessary to set forth at length the judicial proceedings had in any case then or formerly pending in any court, civil or military, or before any justice of the peace, it is sufficient to set forth the substance only of the proceedings, or the substance

of such part thereof as makes, or helps to make, the offense prosecuted. (R. C., c. 35, s. 15; Code, s. 1184; Rev., s. 3243; C. S., s. 4612.)

**Power of Legislature.** — The legislature has the undoubted right to modify old forms of bills of indictment, or establish new ones, provided the form established is sufficient to apprise the defendant with reasonable certainty of the nature of the crime of which he stands charged. *State v. Harris*, 145 N.C. 456, 59 S.E. 115 (1907).

**Purpose of Section.** — The purpose of this section and § 15-153 is to render unnecessary merely useless refinements and technicalities in pleading that once prevailed. *State v. Murphy*, 101 N.C. 697, 8 S.E. 142 (1888).

**Office of Indictment.** — The office of an indictment is to inform the defendant with sufficient certainty of the charge against him to enable him to prepare his defense. *State v. Gates*, 107 N.C. 832, 12 S.E. 319 (1890).

**Refinements Abolished.**—The technical and useless refinements of the common law, formerly required in drawing bills of indictment in criminal cases, have been all abolished by statute. *State v. Hawley*, 186 N.C. 433, 119 S.E. 888 (1923). See also *State v. Morrison*, 202 N.C. 60, 161 S.E. 725 (1932).

**Statement Required.** — In every indictment, the facts and circumstances must be stated with such certainty that the defendant may judge whether they constitute an indictable offence or not. *State v.*

*Lewis*, 93 N.C. 581 (1885). And thus where an indictment sets forth the substance of the offence charged "in a plain, intelligible and explicit manner," with such fullness as that the court could see that it was charged, and it gave the defendant such information as was necessary to enable him to make defence on the trial and in case of a subsequent prosecution, it is sufficient under this section and § 15-153. *State v. Murphy*, 101 N.C. 697, 8 S.E. 142 (1888).

**Omission of Caption Does Not Vitiates.**—While every indictment properly should have a caption, it is no part of the indictment, and its omission is no ground for arresting judgment. *State v. Wasden*, 4 N.C. 596 (1817); *State v. Brickell*, 8 N.C. 354 (1821); *State v. Lane*, 26 N.C. 113 (1843); *State v. Dula*, 61 N.C. 437 (1868); *State v. Arnold*, 107 N.C. 861, 11 S.E. 990 (1890).

**Mistake in Caption.**—A misrecital of the county in the caption is not ground for arrest of judgment. *State v. Sprinkle*, 65 N.C. 463 (1871); *State v. Arnold*, 107 N.C. 861, 11 S.E. 990 (1890).

**Signature of Solicitor Not Requisite.**—It is regular and orderly for the bill to be signed by the solicitor, but such signing is not essential to its validity. *State v. Cox*, 28 N.C. 440 (1846); *State v. Mace*, 86 N.C. 668 (1882); *State v. Arnold*, 107 N.C. 861, 11 S.E. 990 (1890).

**§ 15-143. Bill of particulars.**—In all indictments when further information not required to be set out therein is desirable for the better defense of the accused, the court, upon motion, may, in its discretion, require the solicitor to furnish a bill of particulars of such matters. (Rev., s. 3244; C. S., s. 4613.)

**In General.**—This provision as to a bill of particulars had prevailed previously as to civil proceedings, § 1-150, and was by this section made expressly applicable to criminal cases, to which the court had applied it in *State v. Brady*, 107 N.C. 822, 12 S.E. 325 (1890); *State v. Stephens*, 170 N.C. 745, 87 S.E. 131 (1915).

**Purpose of Section.** — This section intended to make all indictments alike in regard to dispensing with the insertion of the means and methods by which any offense was committed. *State v. Stephens*, 170 N.C. 745, 87 S.E. 131 (1915).

**When Section Applies.**—This section applies only when further information, not required to be set out in the indictment is desired. *State v. Thornton*, 251 N.C. 658, 111 S.E.2d 901 (1960).

**Object of Bill of Particulars.** — The

whole object of a bill of particulars is to enable the defendant to properly prepare his defense in cases where the bill of indictment, though correct in form and sufficient to apprise the defendant, in general terms, of the "accusation" against him, is yet so indefinite in its statements, as to the particular charge or occurrence referred to, that it does not afford defendant a fair opportunity to procure his witnesses or prepare his defense. *State v. Seaboard Air Line R.R.*, 149 N.C. 508, 62 S.E. 1088 (1908).

**The function of a bill of particulars under this section** is to provide "further information not required to be set out" in the bill of indictment, but never to supply matter required to be charged as an essential ingredient of the offense. *State v. Gibbs*, 234 N.C. 259, 66 S.E.2d 883 (1951).

Unless the exact time and place of the alleged occurrence are essential elements of the offense itself, a defendant may obtain further information in respect thereto by motion for a bill of particulars. *State v. Eason*, 242 N.C. 59, 86 S.E.2d 774 (1955).

**State Confined to Particulars Stated.**—The granting of a bill of particulars on an indictment for a criminal offense is primarily to inform the accused of the charges against him, and secondarily to inform the court, and while this is not strictly a part of the indictment, its effect is to confine the State in its evidence to the particulars stated, and it is reversible error to the prejudice of the defendant's rights for the court to admit, over his objection, evidence as to other criminal offenses not included in the bill to show the scienter or quo animo in relation to the particulars enumerated and coming within the scope of those generally charged in the indictment. *State v. Wadford*, 194 N.C. 336, 139 S.E. 608 (1927).

When a bill of particulars is furnished, it limits the evidence to the transactions or items therein stated. *State v. Knight*, 261 N.C. 17, 134 S.E.2d 101 (1964).

**The "particulars" authorized are not a part of the indictment.** *State v. Thornton*, 251 N.C. 658, 111 S.E.2d 901 (1960).

**Former Details Not Now Charged in Indictment.** — It is no longer charged whether a murder was committed with a knife or a pistol, nor the length and breadth and depth of a wound, and the same is true as to all other offenses. In lieu of this, we have adopted this section which provides for a bill of particulars. *State v. Stephens*, 170 N.C. 745, 87 S.E. 131 (1915).

**When Denial of Motion for Bill of Particulars Not Prejudicial.**—The defendant was in no way prejudiced by the denial of his motion for a bill of particulars where his statements to the officers as to how, when, and under what circumstances he killed the deceased were in accord with the theory of the trial in the court below. *State v. Scales*, 242 N.C. 400, 87 S.E.2d 916 (1955).

**The defendant was in effect furnished a bill of particulars where the warrant or indictment described the liquor as "non-tax-paid liquor" since the descriptive words identified the liquor.** *State v. Tillery*, 243 N.C. 706, 92 S.E.2d 64 (1956).

**What Bill Will Not Supply.**—A bill of particulars will not supply any matter required to be charged in the indictment, as an ingredient of the offense. *State v. Long*, 143 N.C. 670, 57 S.E. 349 (1907). See al-

so *State v. Johnson*, 220 N.C. 773, 18 S.E.2d 358 (1942) (dis. op.); *State v. Thornton*, 251 N.C. 658, 111 S.E.2d 901 (1960); *State v. Banks*, 263 N.C. 784, 140 S.E.2d 318 (1965).

The provisions of this section cannot supply a deficiency in an indictment when the language of the indictment fails to adequately charge the essential concomitants of the offense. *State v. Cole*, 202 N.C. 592, 163 S.E. 594 (1932). See also *State v. Wilson*, 218 N.C. 769, 12 S.E.2d 654 (1941); *State v. Cox*, 244 N.C. 57, 92 S.E.2d 413 (1956).

A defect in a warrant is not cured by a bill of particulars. *State v. Banks*, 263 N.C. 784, 140 S.E.2d 318 (1965).

A fatal defect in an indictment is not cured by this section, which enables the defendant to call for a bill of particulars. The "particulars" authorized are not a part of the indictment. A bill of particulars will not supply any matter which the indictment must contain. *State v. Greer*, 238 N.C. 325, 77 S.E.2d 917 (1953).

**Granting Order Is within Court's Discretion.**—The granting of an order for a bill of particulars is in the discretion of the court, and the question of sufficient compliance is likewise in the sound legal discretion of the trial judge. *State v. Seaboard Air Line R.R.*, 149 N.C. 508, 62 S.E. 1088 (1908); *State v. Scales*, 242 N.C. 400, 87 S.E.2d 916 (1955).

A request for a bill of particulars is addressed to the discretion of the court. *State v. Thornton*, 251 N.C. 658, 111 S.E.2d 901 (1960); *State v. Banks*, 263 N.C. 784, 140 S.E.2d 318 (1965).

The granting or denial of motions for bills of particulars is within the discretion of the court and not subject to review except for palpable and gross abuse thereof. *State v. Lippard*, 223 N.C. 167, 25 S.E.2d 594 (1943).

**Same—Amendment of Bill.**—A bill of particulars, being no part of the indictment, is not subject to demurrer, and may be amended at any time, with permission of the court, on such terms or under such conditions as are just. *Townsend v. Williams*, 117 N.C. 330, 23 S.E. 461 (1895); *State v. Wadford*, 194 N.C. 336, 139 S.E. 608 (1927).

A bill of particulars filed by order of court in a criminal action is not regarded as a part of the indictment, and with the court's permission may be amended at any time, and is not subject to demurrer, the office of such bill being to advise the court and the accused of specific occurrences for



investigation. *State v. Beal*, 199 N.C. 278, 154 S.E. 604 (1930).

**Meaning of "Discretion."** — The term "discretion," as used and contemplated in the statute, should be construed to mean the sound legal discretion of the trial court; it is well understood that the action of the lower court will not be reviewed or disturbed on appeal, unless there has been manifest abuse in the respect to defendant's prejudice. *State v. Dewey*, 139 N.C. 556, 51 S.E. 937 (1905); *State v. Seaboard Air Line R.R.*, 149 N.C. 508, 62 S.E. 1088 (1908).

**When Applied for.**—Where the defendant thinks that an indictment, otherwise objectionable in form, fails to impart information sufficiently specific as to the nature of the charge, he may before trial move the court to order that a bill of particulars be filed, and the court will not arrest the judgment after verdict where he attempts to reserve his fire until he takes first the chance of acquittal. *State v. Shade*, 115 N.C. 757, 20 S.E. 537 (1894); *State v. Corbin*, 157 N.C. 619, 72 S.E. 1071 (1911).

**Indictment for Perjury.**—Where the defendant in an action for perjury is in ignorance of the particulars of the offense charged, his remedy is by application to the court for a bill of particulars under this section if the indictment is in the form prescribed by § 15-145. *State v. Hawley*, 186 N.C. 433, 119 S.E. 888 (1923).

**Indictment for Malfeasance of Bank Officer.**—It is within the sound discretion of the trial judge to try, separately or collectively, the defendant, indicted under the provisions of § 14-254, for some or all offenses committed by a series of checks on the bank, whereby he had unlawfully "abstracted" the funds of the bank; and where the indictment is sufficient for con-

viction, the defendant's remedy is by requesting a bill of particulars when he reasonably so desires. *State v. Switzer*, 187 N.C. 88, 121 S.E. 143 (1924).

**What Constitutes Waiver of Right.** — Where a bank employee is charged with the indictable offense of making false entries upon the books of the bank in fraud or deceit of "other persons to the jurors unknown," the defendant should make his motion to the discretion of the trial judge for a bill of particulars requiring the name of these unknown persons, and his failure to do so will be deemed a waiver of his right. *State v. Hedgecock*, 185 N.C. 714, 117 S.E. 47 (1923).

**Motion to Quash Not Proper Remedy.** — Where the criminal indictment sufficiently charges all the elements of the offense but is not as definite as the defendant may desire, the defendant's remedy is by motion for a bill of particulars, and not by a motion to quash. *State v. Everhardt*, 203 N.C. 610, 166 S.E. 738 (1932); *State v. Knight*, 261 N.C. 17, 134 S.E.2d 101 (1964).

**Where Motion in Arrest of Judgment Properly Denied.** — An indictment charging defendant disjunctively with murder committed with malice, premeditation, and deliberation and with murder committed in the perpetration of a robbery, is not void for uncertainty, since either charge constitutes murder in the first degree, and defendant's remedy, if he desires more specific information is by motion for a bill of particulars under this section, but a motion in arrest of judgment after a verdict of guilty of murder in the first degree, is properly denied. *State v. Puckett*, 211 N.C. 66, 189 S.E. 183 (1937).

**Cited in** *State v. Suncrest Lumber Co.*, 199 N.C. 199, 154 S.E. 72 (1930); *State v. Grayson*, 239 N.C. 453, 80 S.E.2d 387 (1954).

**§ 15-144. Essentials of bill for homicide.** — In indictments for murder and manslaughter, it is not necessary to allege matter not required to be proved on the trial; but in the body of the indictment, after naming the person accused, and the county of his residence, the date of the offense, the averment "with force and arms," and the county of the alleged commission of the offense, as is now usual, it is sufficient in describing murder to allege that the accused person feloniously, willfully, and of his malice aforethought, did kill and murder (naming the person killed), and concluding as is now required by law; and it is sufficient in describing manslaughter to allege that the accused feloniously and willfully did kill and slay (naming the person killed), and concluding as aforesaid; and any bill of indictment containing the averments and allegations herein named shall be good and sufficient in law as an indictment for murder or manslaughter, as the case may be. (1887, c. 58; Rev., s. 3245; C. S., s. 4614.)

**Cross Reference.**—As to homicide generally, see §§ 14-17, 14-18 and notes thereto.

**Section Constitutional.** — The power of the legislature to prescribe the form of indictment for murder is upheld in *State v.*

Moore, 104 N.C. 743, 10 S.E. 183 (1889); State v. Brown, 106 N.C. 645, 10 S.E. 870 (1890); State v. Arnold, 107 N.C. 861, 11 S.E. 990 (1890).

This section is an abbreviated form for a bill of indictment for murder. State v. Puckett, 211 N.C. 66, 189 S.E. 183 (1937).

**"Willfully" Not Necessary in Indictment for Murder.**—The word "willfully" is not essential to the validity of an indictment for murder, neither at common law nor under this section. State v. Kirkman, 104 N.C. 911, 10 S.E. 312 (1889); State v. Harris, 106 N.C. 682, 11 S.E. 377 (1890); State v. Arnold, 107 N.C. 861, 11 S.E. 990 (1890).

**What Is Sufficient under Section.**—This section declares an indictment containing certain words "sufficient," but it does not make those words essential, nor by any reasonable construction can it be held to make technical and "sacramental" words which were not theretofore necessary in indictments for murder. State v. Arnold, 107 N.C. 861, 11 S.E. 990 (1890).

**Same—Form of Indictment Set Out.**—The following is full and sufficient in the body of an indictment for murder: "The jurors for the State on their oaths present that A. B., in the county of E., did feloniously, and of malice aforethought, kill and murder C. D." And it is sufficient in an indictment for manslaughter to follow the same form, omitting the words "and with malice aforethought" and substituting "slay" in the stead of the word "murder." These forms contain, in the words of the statute, "every averment necessary to be proved." State v. Arnold, 107 N.C. 861, 11 S.E. 990 (1890). This form also approved in State v. Southern Ry., 125 N.C. 666, 34 S.E. 527 (1899).

**An indictment charging the essential facts of murder** as required by this section, is sufficient to sustain the court's charge based upon the evidence in the case relative to murder committed in the perpetration of robbery or other felony. State v. Fogleman, 204 N.C. 401, 168 S.E. 536 (1933).

**Statements Not Necessary.**—An indictment is not defective for failure to allege whether the person killed was a man or woman, or whether the mortal wound was inflicted by poisoning, stabbing or shooting. State v. Pate, 121 N.C. 659, 28 S.E. 354 (1897).

It is not necessary that an indictment for murder committed in the attempt to perpetrate larceny should contain a specific allegation of the attempted larceny, such allegation not having been necessary

in indictments prior to the adoption of the section. State v. Covington, 117 N.C. 834, 23 S.E. 337 (1895).

The omission of the word "wound" in an indictment for murder was held not fatal, long before the adoption of the present short form of indictment for murder under this section. State v. Rinehart, 75 N.C. 52 (1876); State v. Ratliff, 170 N.C. 707, 86 S.E. 997 (1915).

An indictment of murder in the first degree need not allege deliberation and premeditation, an indictment in the form prescribed by this section being sufficient. State v. Kirksey, 227 N.C. 445, 42 S.E.2d 613 (1947).

A bill of indictment, drawn in the statutory form as required by this section, includes the charge of murder committed in the perpetration of a robbery, without a specific allegation or count to that effect. State v. Smith, 223 N.C. 457, 27 S.E.2d 114 (1943).

**State May Show Homicide in Perpetration of Rape.**—Under an indictment for murder in the first degree in the usual form under this section, the State is entitled to introduce evidence that defendant committed the homicide in the perpetration of, or attempt to perpetrate rape, it being incumbent upon defendant if he desires more definite information to request a bill of particulars. State v. Grayson, 239 N.C. 453, 80 S.E.2d 387 (1954); State v. Scales, 242 N.C. 400, 87 S.E.2d 916 (1955).

**Variance between Allegata and Probata.**—Where indictment charged capital felony of murder in the language of this section and contained every necessary averment, proof that murder was committed in the perpetration of felony constituted no variance between allegata and probata. State v. Mays, 225 N.C. 486, 35 S.E.2d 494 (1945); State v. Grayson, 239 N.C. 453, 80 S.E.2d 387 (1954); State v. Scales, 242 N.C. 400, 87 S.E.2d 916 (1955).

An indictment for homicide in the language of this section is sufficient and proof that the murder was committed in the perpetration of a felony constitutes no variance. State v. Crawford, 260 N.C. 548, 133 S.E.2d 232 (1963).

**Variance in Time Not Fatal.**—Where an indictment for murder charged the killing to have taken place December fifth and the evidence showed that, while the deceased was wounded on that day, he died three days thereafter, and before the bill of indictment was found. Held, that the variance was not fatal. State v. Pate, 121 N.C. 659, 28 S.E. 354 (1897).

**Indictment under Section Held to Give**

**Full Information of Crime.**—Where an indictment was drawn according to this section the defendant was given full information of the crime on which he was being tried. There was nothing indefinite or uncertain about the bill of indictment. It was in the alternative, but this was merely two counts in one bill of indictment. *State v. Puckett*, 211 N.C. 66, 189 S.E. 183 (1937).

**Applied in** *State v. Kirkman*, 208 N.C. 719, 182 S.E. 498 (1935); *State v. Dills*, 210 N.C. 178, 185 S.E. 677 (1936); *State v. Hudson*, 218 N.C. 219, 10 S.E.2d 730 (1940); *State v. Horner*, 248 N.C. 342, 103 S.E.2d 694 (1958); *State v. Bailey*, 254 N.C. 380, 119 S.E.2d 165 (1961); *State*

*v. Johnson*, 256 N.C. 449, 124 S.E.2d 126 (1962); *State v. Arnold*, 258 N.C. 563, 129 S.E.2d 229 (1963); *State v. McGirt*, 263 N.C. 527, 139 S.E.2d 640 (1965).

**Cited in** *State v. Thornton*, 211 N.C. 413, 190 S.E. 758 (1937); *State v. Godwin*, 211 N.C. 419, 190 S.E. 761 (1937); *State v. Smith*, 221 N.C. 278, 20 S.E.2d 313 (1942); *State v. Roman*, 235 N.C. 627, 70 S.E.2d 857 (1952); *State v. Gay*, 251 N.C. 78, 110 S.E.2d 458 (1959); *State v. Jones*, 254 N.C. 450, 119 S.E.2d 213 (1961); *State v. Foust*, 258 N.C. 453, 128 S.E.2d 889 (1963); *State v. Shaw*, 263 N.C. 99, 138 S.E.2d 772 (1964); *State v. Todd*, 264 N.C. 524, 142 S.E.2d 154 (1965).

**§ 15-145. Form of bill for perjury.**—In every indictment for willful and corrupt perjury it is sufficient to set forth the substance of the offense charged upon the defendant, and by what court, or before whom, the oath was taken (averring such court or person to have competent authority to administer the same), together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceedings, either in law or equity, other than aforesaid, and without setting forth the commission or authority of the court or person before whom the perjury was committed. In indictments for perjury the following form shall be sufficient, to wit:

The jurors for the State, on their oath, present, that A. B., of ..... County, did unlawfully commit perjury upon the trial of an action in ..... court, in ..... County, wherein ..... was plaintiff and ..... was defendant, by falsely asserting, on oath (or solemn affirmation) (here set out the statement or statements alleged to be false), knowing the said statement, or statements, to be false, or being ignorant whether or not said statement was true. (1842, c. 49, s. 1; R. C., c. 35, s. 16; Code, s. 1185; 1889, c. 83; Rev., ss. 3246, 3247; C. S., s. 4615.)

**Cross Reference.**—As to perjury generally, see § 14-209 et seq.

**In General.**—A person charged with perjury must be indicted by the grand jury as the offense is a felony. A trial without an indictment is contrary to the Constitution, Art. 1, § 12. *State v. Hyman*, 164 N.C. 411, 79 S.E. 284 (1913).

But a defendant certainly can derive no just benefit from the insertion in the charge of the minutiae of what would constitute perjury. The use of such phraseology was indeed always illogical, and the experience of ages has been that it served not so much to enlighten the defendant as to the charge he was to meet, as to present a network of technicalities which hindered the trial of the cause upon its merits and very often caused a miscarriage of justice. *State v. Gates*, 107 N.C. 832, 12 S.E. 319 (1890).

And thus the purpose of this section is to render unnecessary useless details and niceties, in charging the offense of perjury, that one time prevailed to the prejudice of the administration of criminal justice.

*State v. Robertson*, 98 N.C. 751, 4 S.E. 511 (1887).

This section dispenses with the necessity of setting forth the record of the indictment, on the trial of which the false oath is alleged to have been taken, and only requires that the substance would be set forth, but it did not dispense with the necessity of making all the averments in an indictment for perjury which were all necessary to be proved, and it is necessary to prove in what court, or before whom, the oath was taken. *State v. Lewis*, 93 N.C. 581 (1885).

The effect of this section is not to change in any respect the constituent elements of perjury nor the nature or mode of proof. It only relieves the State from charging in the indictment the details, or rather the definition of the offense, and makes it sufficient to allege that the defendant unlawfully committed perjury, charging the name of the action and of the court in which committed, setting out the matter alleged to have been falsely sworn



and averring further that the defendant knew such to be false, or that he was ignorant whether or not it was true. *State v. Lucas*, 244 N.C. 53, 92 S.E.2d 401 (1956).

**Section Constitutional.**—The form of indictment for perjury prescribed by this section is sufficient and legal. *State v. Gates*, 107 N.C. 832, 12 S.E. 319 (1890); *State v. Peters*, 107 N.C. 876, 12 S.E. 74 (1890); *State v. Hawley*, 186 N.C. 433, 119 S.E. 888 (1923), overruling *State v. Cline*, 150 N.C. 854, 64 S.E. 591 (1909).

**Section Read with § 15-146.**—Since the commission of perjury by another is the basic element in the crime of subornation of perjury, it is appropriate to read this section and § 15-146 together. *State v. Lucas*, 244 N.C. 53, 92 S.E.2d 401 (1956); *State v. Lucas*, 247 N.C. 208, 100 S.E.2d 366 (1957).

**Word "Feloniously" Not Necessary.**—In the cases of *State v. Shaw*, 117 N.C. 764, 23 S.E. 246 (1895) and *State v. Bunting*, 118 N.C. 1200, 24 S.E. 118 (1896), which were indictments for perjury, it was expressly held that the term "feloniously" was required to make a good bill of indictment for this offense. Both of them, too, were on indictments instituted after the adoption of this section which established the form for indictment for perjury. The court, however, in rendering these decisions, was evidently not advertent to the statute above referred to, for the reason probably that it does not appear in the general Code of 1883, and was, therefore, not called to its attention; the statute having been enacted at a subsequent session and being chapter 83, laws of 1889. *State v. Harris*, 145 N.C. 456, 59 S.E. 115 (1907).

But this section does not make the word "feloniously" a part of the bill, and it does not appear in the form set out, and the same is, therefore, no longer required. *State v. Harris*, 145 N.C. 456, 59 S.E. 115 (1907); *State v. Holder*, 153 N.C. 606, 69 S.E. 66 (1910).

**Sufficient Averment of Jurisdiction.**—The jurisdiction of the justice of the peace of the complaint upon the examination whereof the alleged perjury was committed is sufficiently averred where it is averred, that the justice had power to administer the oath. *State v. Davis*, 69 N.C. 495 (1873).

**Style of the Court.**—The style of the court before which the perjury is alleged to have been committed must be legally set forth. *State v. Street*, 5 N.C. 156, 3 Am. Dec. 682 (1807).

**Proceedings Not Set Out.**—Where an indictment for perjury alleges that the

false oath was taken before a justice of the peace upon the trial of a warrant, etc., it is not necessary to set forth the proceedings in which the false oath was alleged to have been made. *State v. Roberson*, 98 N.C. 751, 4 S.E. 511 (1887).

**Indictment Need Not Charge Materiality of False Testimony.**—Prior to the adoption of this section it was settled that in indictments for perjury the indictment must charge that the alleged false testimony was material to the issue. See *State v. Mumford*, 12 N.C. 519 (1828); *State v. Davis*, 69 N.C. 495 (1873). Since this section was passed, however, it has been repeatedly held that this need not appear in the indictment. See *State v. Hawley*, 186 N.C. 433, 119 S.E. 888 (1923) and cases cited. The case of *State v. Cline*, 150 N.C. 854, 64 S.E. 591 (1909), evidently overlooked the provisions of this section as well as the cases previously construing it and held in accordance with the former view that the materiality of the false testimony must be charged in the indictment. This case was expressly overruled by the court in *State v. Hawley*, supra.

But the averment in a bill that defendant committed perjury includes the necessity for proving that the false testimony was material to the issue. *State v. Cline*, 146 N.C. 640, 61 S.E. 522 (1908).

**Variance Held Fatal.**—Where an indictment for perjury charged that the false oath was taken at one term of a court in a trial between A and B and the records of that court showed that at that term there was no trial between these parties, but the record showed that at a term other than the one alleged in the indictment there was such a trial, and the judge allowed this record to be introduced: Held, error, and that the variance was fatal. *State v. Lewis*, 93 N.C. 581 (1885).

**Not Quashed for Omissions.**—Although an indictment for perjury, which fails to allege that the defendant "knew the said statement to be false," or that "he was ignorant whether or not said statement was false," is defective, the court should not quash it, but the defendant should be held until a proper indictment is had. *State v. Flowers*, 109 N.C. 841, 13 S.E. 718 (1891).

**Surplusage.**—Where perjury was alleged to have been committed in the trial of a "suit, controversy, or investigation," without a definite statement of the nature of the proceeding, the words, "suit, controversy, or investigation," under this section, may be regarded as surplusage in a bill of indictment charging perjury, and a motion to quash upon the ground that there was

indefiniteness of statement of the nature of the proceeding will not be sustained. *State v. Hawley*, 186 N.C. 433, 119 S.E. 888 (1923).

An indictment for perjury, alleged to have been committed upon a trial in the court of a justice of the peace, is not defective because it sets out the name of the justice before whom the case was tried. *State v. Flowers*, 109 N.C. 841, 13 S.E. 718 (1891).

**No Change in Proof Required.** — This

section has merely simplified the form of the indictment for perjury, and the constituent elements of the offense remain unchanged and require the same proof to establish the commission of the crime. *State v. Peters*, 107 N.C. 876, 12 S.E. 74 (1890); *State v. Cline*, 146 N.C. 640, 61 S.E. 522 (1908).

**Applied in** *State v. Rhinehart*, 209 N.C. 150, 183 S.E. 388 (1936).

**Cited in** *State v. Watkins*, 256 N.C. 606, 124 S.E.2d 570 (1962).

**§ 15-146. Bill for subornation of perjury.**—In every indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit willful and corrupt perjury, it is sufficient to set forth the substance of the offense charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration or any part of any record or proceedings, and without setting forth the commission or authority of the court or person before whom the perjury was committed or was agreed or promised to be committed. (1842, c. 49, s. 2; R. C., c. 35, s. 17; Code, s. 1186; Rev., s. 3248; C. S., s. 4616.)

**Form Required to Be Followed.**—Since the commission of the crime of perjury is the basic element in the crime of subornation of perjury, it is appropriate to read this section and § 15-145 in reference to each other. And if it be essential to charge the offense of perjury in conformity to the form of indictment prescribed in § 15-145, it would seem equally clear that in an indictment charging subornation of perjury the crime of perjury constituting the basis therefor is required to be set forth in conformity to the form of indictment so prescribed. *State v. Lucas*, 244 N.C. 53, 92 S.E.2d 401 (1956); *State v. Lucas*, 247 N.C. 268, 100 S.E.2d 366 (1957).

**Allegations Required.**—This section re-

quires that an indictment for subornation of perjury should charge that the defendant did unlawfully, willfully, and feloniously procure another to willfully and corruptly commit perjury. *State v. Watkins*, 256 N.C. 606, 124 S.E.2d 570 (1962).

An indictment under this section should designate the court and the nature of the case wherein the alleged perjury occurred, and set out either the false statement or statements defendant is alleged to have procured another to make, or that the defendant knew said statement or statements to be false, or that he was ignorant as to whether or not such statement or statements were true. *State v. Watkins*, 256 N.C. 606, 124 S.E.2d 570 (1962).

**§ 15-147. Former conviction alleged in bill for second offense.** — In any indictment for an offense which, on the second conviction thereof, is punished with other or greater punishment than on the first conviction, it is sufficient to state that the offender was, at a certain time and place, convicted thereof, without otherwise describing the previous offense; and a transcript of the record of the first conviction, duly certified, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction. (R. C., c. 35, s. 18; Code, s. 1187; Rev., s. 3249; C. S., s. 4617.)

**In General.**—When a second conviction is punished with other or greater punishment than for a first conviction, the first conviction shall be charged as required by this section. *State v. Davidson*, 124 N.C. 839, 32 S.E. 957 (1899).

**Necessity for Alleging That Offense Charged Is Second or Subsequent Offense.** — Where a statute prescribes a higher penalty in case of repeated convictions for similar offenses, an indictment for a subsequent offense must allege facts showing that the offense charged is a

second or subsequent crime within the contemplation of the statute in order to subject the accused to the higher penalty. *State v. Miller*, 237 N.C. 427, 75 S.E.2d 242 (1953); *State v. Stone*, 245 N.C. 42, 95 S.E.2d 77 (1956).

A felony conviction for a second or subsequent offense is not permissible, and punishment therefor may not be imposed, unless the indictment alleges facts showing that the offense charged is a second offense. *State v. Lawrence*, 264 N.C. 220, 141 S.E.2d 264 (1965).

The mere words "second offense" are not sufficient allegation of facts to charge the felony. *State v. Lawrence*, 264 N.C. 220, 141 S.E.2d 264 (1965).

In addition, time and place of conviction of prior offense must be alleged. *State v. Lawrence*, 264 N.C. 220, 141 S.E.2d 264 (1965).

**No Presumption of Second Conviction.**—The first conviction of manufacturing or aiding and abetting in the manufacture of spirituous, etc., liquors is a misdemeanor, and the second is a felony; and where the indictment does not charge a previous conviction it will be presumed that the defendant has not heretofore been convicted of the offense charged. *State v. Clark*, 183 N.C. 733, 110 S.E. 641 (1922).

**Admission of Defendant May Not Be**

§ 15-148. **Manner of alleging joint ownership of property.**—In any indictment wherein it is necessary to state the ownership of any property whatsoever, whether real or personal, which belongs to, or is in the possession of, more than one person, whether such persons be partners in trade, joint tenants or tenants in common, it is sufficient to name one of such persons, and to state such property to belong to the person so named, and another or others as the case may be; and whenever, in any such indictment, it is necessary to mention, for any purpose whatsoever, any partners, joint tenants or tenants in common, it is sufficient to describe them in the manner aforesaid; and this provision shall extend to all joint stock companies and trustees. (R. C., c. 35, s. 19; Code, s. 1188; Rev., s. 3250; C. S., s. 4618.)

**Apparent Variance Cured.**—Where property is charged in an indictment for larceny as belonging to A and another, and it is proved on the trial to be the property of A and B, a firm well known in the community, the apparent variance is cured by this section. *State v. Capps*, 71 N.C. 93 (1874).

Where A makes a crop of cotton on the plantation of B, under a verbal agreement that B is to have half of it, it was held, that in an indictment for larceny the cotton was properly charged to be the property of A and another. *State v. Patterson*, 68 N.C. 292 (1873).

§ 15-149. **Description in bill for larceny of money.**—In every indictment in which it is necessary to make any averment as to the larceny of any money, or United States treasury note, or any note of any bank whatsoever, it is sufficient to describe such money, or treasury note, or bank note, simply as money, without specifying any particular coin, or treasury note, or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin, or treasury note, or bank note, although the particular species of coin, of which such amount was composed, or the particular nature of the treasury note, or bank note, shall not be proven. (1876-7, c. 68; Code, s. 1190; Rev., s. 3251; C. S., s. 4619.)

**Purpose of Section.**—An indictment, before 1877, for stealing "money" without further description could not have been sustained, and the legislature, to remedy

**Assumed.**—The admission of the authenticity of the record of an inferior court introduced by the solicitor is not an admission by the defendant that he had been theretofore convicted of a similar offense, even though the record shows a conviction of a similar offense, there being no admission by defendant that he was the person referred to in the record and an instruction assuming that defendant had made such admission must be held for error. *State v. Powell*, 254 N.C. 231, 118 S.E.2d 617 (1961).

**Applied in** *State v. Painter*, 261 N.C. 332, 134 S.E.2d 638 (1964); *State v. Morgan*, 263 N.C. 400, 139 S.E.2d 708 (1965).

**Cited in** *State v. Cole*, 241 N.C. 576, 86 S.E.2d 203 (1955).

**Variance Not Cured.**—Upon the trial of an indictment for injury to livestock, it was held to be a variance where the property was laid in "L. S. and others," and the proof was that L. S. was the exclusive owner. *State v. Hill*, 79 N.C. 657 (1878).

**Words "and Another or Others" Invalidates.**—An indictment for larceny, which charges the thing taken to be the property of J. R. D. "and another or others" is fatally defective under this section. *State v. Harper*, 64 N.C. 129 (1870).

the difficulty of describing and identifying bank bills, treasury notes, etc., which may be stolen, passed this section. *State v. Reese*, 83 N.C. 637 (1880).



**Amount Should Be Charged.**—The term “money,” without anything added to make it more definite, is too loose in indictments, and it should be described at least by the amount, as to how many dollars and cents. *State v. Reese*, 83 N.C. 637 (1880).

**Charge Sufficient.** — The charge of the theft of “\$5 in money of the value of \$5” is good under this section and is sustained by the proof of the theft of any kind of coin or treasury or bank notes without proof of the particular kind of coin or treasury or bank notes. *State v. Carter*, 113 N.C. 639, 18 S.E. 517 (1893).

**§ 15-150. Description in bill for embezzlement.** — In indictments for embezzlement, except when the offense relates to a chattel, it is sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved. (1871-2, c. 145, s. 2; Code, s. 1020; Rev., s. 3252; C. S., s. 4620.)

**Cross Reference.**—As to embezzlement in general, see § 14-90 et seq.

**Sufficient Description of Property.**—The description of the property embezzled, as “one note for five dollars in money of the value of five dollars,” is sufficiently specific. *State v. Fain*, 106 N.C. 760, 11 S.E. 593 (1890).

**Surplusage Which Does Not Vitate.**—An allegation in an indictment for embezzlement that the defendant “did steal, take, carry away” the property alleged to have been embezzled, is surplusage, and

Inasmuch as money is the measure of values a charge in an indictment of taking “ten dollars in money” is an allegation of taking “the value of ten dollars.” *State v. Brown*, 113 N.C. 645, 18 S.E. 51 (1893).

**Variance Allowed.** — Where an indictment charged the larceny of “thirty dollars in money,” and the proof was that defendant stole “three ten dollar bills” it was held, no variance. *State v. Freeman*, 89 N.C. 469 (1883).

will not vitiate an indictment otherwise sufficient. *State v. Fain*, 106 N.C. 760, 11 S.E. 593 (1890).

**Variance.** — In a prosecution for embezzlement the failure of proof of embezzlement of the whole sum charged in the bill of indictment does not constitute a fatal variance between allegation and proof where there is proof of embezzlement of a sum less than that charged in the indictment. *State v. Dula*, 206 N.C. 745, 175 S.E. 80 (1934).

**§ 15-151. Intent to defraud; larceny and receiving.** — In any case where an intent to defraud is required to constitute the offense of forgery, or any other offense whatever, it is sufficient to allege in the indictment an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded; and on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, county, city, town, or parish, or body corporate, or any public officer in his official capacity, or any copartnership or member thereof, or any particular person. The defendant may be charged in the same indictment in several counts with the separate offenses of receiving stolen goods, knowing them to be stolen, and larceny. (1852, c. 87, s. 2; R. C., c. 35, ss. 21, 23; 1874-5, c. 62; Code, s. 1191; Rev., s. 3253; C. S., s. 4621.)

**Cross Reference.**—As to larceny and receiving stolen goods generally, see § 14-70 et seq., and § 53-129.

**In General.**—An indictment charging the employee with the indictable offense of making a false entry on the books of a bank in which he was employed need not necessarily specify all those whom he has thereby intended to defraud; and where it has named the officers of the bank and a depositor, “and other persons to the jurors unknown,” it is sufficient to show that the

false entry was entered to deceive the bank examiners in concealing his defalcation, who were present making an examination of his books, both under the common law and the statute. *State v. Hedgecock*, 185 N.C. 714, 117 S.E. 47 (1923).

This section modifies the common law. It is not now necessary to name the injured party where prosecution is based on forgery or other fraud. It is, however, necessary to allege and prove the evil intent when fraud is the foundation for the prose-

cution. *State v. Bissette*, 250 N.C. 514, 108 S.E.2d 858 (1959).

**Solicitor Need Not Elect Count.**—On trial of an indictment for larceny and receiving, etc., the two counts relating to the same transaction and varied to meet the probable proofs, the court will not order the solicitor to elect upon which count he will proceed. *State v. Morrison*, 85 N.C. 561 (1881).

**§ 15-152. Separate counts; consolidation.** — When there are several charges against any person for the same act or transaction or for two or more acts or transactions connected together, or for two or more transactions of the same class of crimes or offenses, which may be properly joined, instead of several indictments, the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court will order them to be consolidated: Provided, that in such consolidating cases the defendant shall be taxed the solicitor's full fee for the first count, and a half fee for only one subsequent count upon which conviction is had or plea of guilty entered: Provided, this section shall not be construed to reduce the punishment or penalty for such offense or offenses. (1917, c. 168; C. S., s. 4622; 1921, c. 100.)

**Cross References.**—As to the amount of solicitors' fees, see § 6-12. As to writing separate counts in violation of laws regulating intoxicating liquors, see § 18-10.

**Editor's Note.**—For note as to general verdict rendered on indictment charging mutually exclusive crimes, see 36 N.C.L. Rev. 84 (1957).

**In General.**—The court is expressly authorized by statute in this State to order the consolidation for trial of two or more indictments in which the defendant or defendants are charged with crimes of the same class, which are so connected in time or place that evidence at the trial of one of the indictments will be competent and admissible at the trial of the others. *State v. White*, 256 N.C. 244, 123 S.E.2d 483 (1962); *State v. Hamilton*, 264 N.C. 277, 141 S.E.2d 506 (1965).

**Consolidation of Separate Indictments.**—Where separate indictments against the same defendant are consolidated, the counts in the separate bills will be treated as separate counts in one bill. *State v. White*, 256 N.C. 244, 123 S.E.2d 483 (1962).

**Time for Making Order of Consolidation.**—It is provided by this section that where there are several charges against any person for the same act or for two or more transactions connected together, or for two or more transactions of the same class of offenses, which may be properly joined, the court will order them to be consolidated. This means, however, that the order of consolidation will be made in such cases when seasonably brought to the court's attention, and not at a time when the validity of the whole

**General Verdict Correct.** — A general verdict of guilty upon an indictment of two counts—one for stealing and the other for receiving stolen goods of a value less than five dollars—is correct and if one count is defective the verdict will be taken upon the good count, and there may be judgment. *State v. Bailey*, 73 N.C. 70 (1875); *State v. Leak*, 80 N.C. 403 (1879).

trial might seriously be threatened by the consolidation. *State v. Dunston*, 256 N.C. 203, 123 S.E.2d 480 (1962).

Where the record justifies the conclusion that after the jury had been impaneled and prosecution begun upon one bill of indictment other bills of indictment were consolidated for trial therewith, a new trial will be awarded even though the indictments might have been properly consolidated initially, since the defendant must be afforded opportunity to plead to the counts consolidated and to pass upon the impartiality of the jury upon such counts. *State v. Dunston*, 256 N.C. 203, 123 S.E.2d 480 (1962).

**Exercise of Discretion by Court.**—Where a defendant is indicted in separate bills "for two or more transactions of the same class of crimes or offenses" the court may in its discretion consolidate the indictments for trial. In exercising discretion the presiding judge should consider whether the offenses alleged are so separate in time or place and so distinct in circumstances as to render a consolidation unjust and prejudicial to defendant. To save the time of the court is not, taken alone, sufficient predicate for consolidation. *State v. White*, 256 N.C. 244, 123 S.E.2d 483 (1962).

**General Verdict Covers Several Counts.**—Where there are several counts in a criminal complaint (called indictment in this case), and each is for a distinct offense, a general verdict of guilty will apply to each, and a judgment rendered as to each count will be sustained for the sepa-

rate offenses. *State v. Mills*, 181 N.C. 530, 106 S.E. 677 (1921).

Where there are several counts in a bill, and a general verdict of guilty is returned, if the verdict on any count is free from valid objection and has evidence tending to support it, the conviction and sentence for that offense will be upheld. *State v. Austin*, 241 N.C. 548, 85 S.E.2d 924 (1955).

**Offenses of Same Class.**—An indictment charging the defendant with "receiving stolen goods," etc., with evidence tending to show the receiving on several occasions, does not require the solicitor to select the count on which he would proceed, on defendant's motion, each offense being of the same class of crime. *State v. Charles*, 195 N.C. 869, 142 S.E. 486 (1928).

**Entering Judgment on Each Offense upon General Verdict of Guilty.**—Where the trial of two separate criminal indictments are consolidated by the judge and tried together as authorized by this section and a general verdict of guilty is returned by the jury, the verdict will apply to each indictment, and judgment pronounced on one of them, but execution suspended on terms agreed upon, and judgment and sentence entered as to the other, is not objectionable on the ground that only one judgment should have been entered, and held further, the sentences being concurrent, the defendant was not prejudiced. *State v. Harvell*, 199 N.C. 599, 155 S.E. 257 (1930).

Ordinarily where separate bills of indictment are returned and the bills are consolidated for trial, as authorized by this section, the counts contained in the respective bills will be treated as though they were separate counts in one bill, and where there are several counts and each count is for a distinct offense, a general verdict of guilty will authorize the imposition of a judgment on each count. *State v. Braxton*, 230 N.C. 312, 52 S.E.2d 895 (1949); *State v. Austin*, 241 N.C. 548, 85 S.E.2d 924 (1955).

Where cases are consolidated for trial and there is a conviction or plea of guilty on several counts, the court may enter a judgment on each count and have the judgments run concurrently or consecutively as it may direct. But the court is not authorized by law to enter a judgment in gross in excess of the greatest statutory penalty applicable to any of the counts upon which there has been a conviction or plea of guilty. *State v. Austin*, 241 N.C. 548, 85 S.E.2d 924 (1955).

**When Order of Consolidation Made in Capital Cases.**—An order of consolidation in capital cases will be made when seasonably brought to the court's attention, and

not at a time when the validity of the whole trial might be threatened by the consolidation. *State v. Harris*, 223 N.C. 697, 28 S.E.2d 232 (1943).

**Obstructing Highway and Injury to Property.**—It is not only proper but it is the duty of the court to consolidate cases where defendant is charged with obstructing a highway and with wanton injury to personal property by placing nails in the highway. *State v. Malpass*, 189 N.C. 349, 127 S.E. 248 (1925).

**Delivering Liquor and Keeping for Sale.**—Under this section consolidation of charges of delivering and keeping for sale under the Turlington Act is proper. *State v. Jarrett*, 189 N.C. 516, 127 S.E. 590 (1925).

**Arson and House Burning.**—Where the grand jury has found two separate indictments, one charging arson and the other the less offense of house burning, both arising from the same transaction, the two may be consolidated and a conviction of the less offense will be sustained on appeal. *State v. Brown*, 182 N.C. 761, 108 S.E. 349 (1921).

**Larceny and Receiving Stolen Goods.**—See annotation to § 14-71.

**Housebreaking and Larceny.**—When not subject to legal objection, a motion by the solicitor to consolidate two criminal actions for trial is addressed to the discretion of the trial judge, and where prosecutions for housebreaking and larceny on two occasions during the same night against two defendants are consolidated without objection, and the charges are so connected in time and place that evidence of guilt in one action is competent in the other, the order of the trial judge consolidating the actions will not be held for error on appeal. *State v. Combs*, 200 N.C. 671, 158 S.E. 252 (1931); *State v. Spencer*, 239 N.C. 604, 80 S.E.2d 670 (1954).

**Murder of One Person and Assault upon Another.**—Upon the trial under an indictment charging the prisoner with murder of M., it is reversible error to the defendant's prejudice for the trial court upon his own motion, after a substantial part of the evidence had been introduced to consolidate the action with another action under a separate indictment charging the prisoner with an assault with a deadly weapon upon D., the prisoner being afforded no opportunity to pass upon the impartiality of the jury upon the assault charge or an opportunity to plead to the charge. *State v. Rice*, 202 N.C. 411, 163 S.E. 112 (1932).

**Separate Acts of Rape.**—Where the evidence tended to show that defendant, a negro, was walking through woods with



a negro girl and forced her to have sexual intercourse with him against her will, that on the same night, while defendant was still in company with the colored girl, he met a white girl in the company of two white boys, and that after an altercation with the white boys, they and the colored girl left the white girl with defendant and that he forced her to have sexual intercourse with him against her will, the consolidation of the prosecutions for the purpose of trial was not error. *State v. Chapman*, 221 N.C. 157, 19 S.E.2d 250 (1942).

**Rape and Armed Robbery.**—An indictment charging defendants with rape and an indictment charging defendants with armed robbery may be consolidated for trial when it appears that defendants stopped the car in which husband and wife were riding, forced them into the woods where each raped the wife while the other held a pistol on the husband, and that one of them committed robbery from the person of the husband while he was being held at the point of the pistol, since the crimes are so connected in time and place that the evidence on the trial of the one is competent and admissible on the trial of the other. *State v. Morrow*, 262 N.C. 592, 138 S.E.2d 245 (1964).

**Rape and Carnal Knowledge of Female.**—A charge of rape and that of carnally knowing a female person between the ages of twelve and sixteen years, under § 14-26, were properly joined in separate counts in one indictment under this section, since they are related in character and grow out of the same transaction. *State v. Hall*, 214 N.C. 639, 200 S.E. 375 (1939).

**Burglary and Rape.**—A motion, made before the introduction of any evidence, to require the State to elect between two separate counts in the bill of indictment, one charging burglary in the first degree and the other rape, is properly denied, the two offenses being of the same class, which under this section may be joined in one indictment in separate counts, and it being within the sound discretion of the trial court as to whether he should compel an election between the counts and, if so, at what stage of the trial. *State v. Smith*, 201 N.C. 494, 160 S.E. 577 (1931).

**Offenses Related to Operation of Automobile.**—A charge of reckless driving, of operating an automobile on the highway while under the influence of intoxicating liquor and of assault with an automobile may be properly joined in one indictment as separate counts charging distinct offenses of the same class growing out of the

same transaction, and separate judgments may be entered upon the jury's verdict of guilty of reckless driving and assault. *State v. Fields*, 221 N.C. 182, 19 S.E.2d 486 (1942).

**Reckless Driving and Passing Standing School Bus.**—Indictments charging defendant with reckless driving and with passing a standing school bus on the highway may be consolidated for trial as provided in this section. *State v. Webb*, 210 N.C. 350, 186 S.E. 241 (1936).

**Unlawful Possession of Liquor and Reckless Driving and Speeding.**—Where the evidence tended to show that defendant, the discovery of liquor on his premises being imminent, sped away in his car, leading the officers a chase at an illegal speed the court properly consolidated for trial a bill of indictment charging unlawful possession of nontaxpaid liquor and unlawful possession of such liquor for the purpose of sale with an indictment charging reckless driving and speeding. *State v. Brown*, 250 N.C. 209, 108 S.E.2d 233 (1959).

It is permissible to join counts charging conspiracy and successive steps thereafter taken by the respective conspirators in executing the common design. *State v. Anderson*, 208 N.C. 771, 182 S.E. 643 (1935).

It is not error, under this section, for the trial court to refuse a separate trial on each two counts in an indictment charging defendants with conspiracy to rob and with murder committed in the attempt to perpetrate the robbery. *State v. Green*, 207 N.C. 369, 177 S.E. 120 (1934).

**Consolidation Is within Discretionary Power of Trial Court.**—The defendant was tried separately in municipal court on two warrants, each charging assault with a deadly weapon, but upon different persons on separate occasions about fifteen days apart. On appeal to the superior court, the court, upon motion of the solicitor, consolidated the cases for trial. Under the provisions of this section, the order of consolidation was within the discretionary power of the trial court. *State v. Waters*, 208 N.C. 769, 182 S.E. 483 (1935). See also *State v. McLean*, 209 N.C. 38, 182 S.E. 700 (1935), wherein indictments charging embezzlement were consolidated.

The court is authorized by this section to order the consolidation for trial of two or more indictments, in which the defendant or defendants are charged with crimes of the same class, which are so connected in time or place that evidence at the trial of one of the indictments will be competent and admissible at the trial of the

others. *State v. Norton*, 222 N.C. 418, 23 S.E.2d 301 (1942).

Upon the consolidation and trial together over defendants' objection of two indictments the first against all three of defendants for abduction of a fourteen-year-old girl, and the second against two of the three defendants for an assault with intent to commit rape upon the abducted child during the abduction, while a verdict of guilty on the first charge and a verdict of not guilty on the second would seem to render the exception to the consolidation reckless, the right to consolidate was in the sound discretion of the trial court. *State v. Truelove*, 224 N.C. 147, 29 S.E.2d 460 (1944).

**Indictment Held Not to Violate Rule against Duplicity.**—See *State v. Gibson*, 233 N.C. 691, 65 S.E.2d 508 (1951).

**Consolidation of Indictments Charging Defendants with Murder of Same Person on Same Date.**—Indictment was returned against one defendant charging him with murder in the first degree of a named person and another indictment was returned against two other defendants charging them with murder in the first degree of the same person and on the same date. Since the State was relying upon the same set of facts at the same place and time as against each of the defendants, the trial court had authority to consolidate the indictments for trial. *State v. Spencer*, 239 N.C. 604, 80 S.E.2d 670 (1954).

§ 15-153. **Bill or warrant not quashed for informality.**—Every criminal proceeding by warrant, indictment, information, or impeachment is sufficient in form for all intents and purposes if it express the charge against the defendant in a plain, intelligible, and explicit manner; and the same shall not be quashed, nor the judgment thereon stayed, by reason of any informality or refinement, if in the bill or proceeding, sufficient matter appears to enable the court to proceed to judgment. (37 Hen. VIII, c. 8; 1784, c. 210, s. 2, P. R.; 1811, c. 809, P. R.; R. C., c. 35, s. 14; Code, s. 1183; Rev., s. 3254; C. S., s. 4623.)

I. Nature and Purpose.

II. General Effect.

III. Defects Cured.

A. In General.

B. Omissions and Mistakes.

C. Allegations Differing from Proof.

#### Cross References.

As to particular defects which do not vitiate, see § 15-155. For examples of sufficient indictments, see the notes under the various sections dealing with particular crimes.

#### I. NATURE AND PURPOSE.

**Editor's Note.** — For note on the sufficiency of indictments in statutory language, see 35 N.C.L. Rev. 118 (1956).

**Purpose of Section.** — As far back as

**Indictments Relating to Receiving of Stolen Goods Separately by Defendants at Different Times and Places.** — Where two persons are charged in separate bills of indictment with receiving stolen goods knowing them to have been stolen, and there is no evidence tending to show there was a conspiracy between them, or between them and other parties, but the indictments relate to the receiving of goods separately by each defendant at different times and places, the consolidation of indictments for trial over objection of appealing defendant is prejudicial error. *State v. Dyer*, 239 N.C. 713, 80 S.E.2d 769 (1954).

**Motion to Consolidate Is Not an Assent to a Mistrial.** — A motion to consolidate three capital cases in medias res pending the taking of testimony on the trial of one of them, is not an assent to a mistrial in order to effect a consolidation. *State v. Harris*, 223 N.C. 697, 28 S.E.2d 232 (1943).

**Applied in** *State v. Lancaster*, 210 N.C. 584, 187 S.E. 802 (1936); *State v. Meshaw*, 246 N.C. 205, 98 S.E.2d 13 (1957); *State v. Grundler*, 251 N.C. 177, 111 S.E.2d 1 (1959); *State v. Cruse*, 253 N.C. 456, 117 S.E.2d 49 (1960); *State v. Egerton*, 264 N.C. 328, 141 S.E.2d 515 (1965).

**Cited in** *State v. Alridge*, 206 N.C. 850, 175 S.E. 191 (1934); *State v. Wells*, 219 N.C. 354, 13 S.E.2d 613 (1941); *State v. Brewer*, 258 N.C. 533, 129 S.E.2d 262 (1963).

*State v. Moses*, 13 N.C. 452 (1830), the court, speaking of this section, says: "This law was certainly designed to uphold the execution of public justice, by freeing the courts from those fetters of form, technicality, and refinement, which do not concern the substance of the charge, and the proof to support it. Many of the stages of the law had before called nice objections of this sort a disease of the law, and a reproach to the bench, and lamented that they were bound down to strict and precise precedents. . . . We think the legislature meant to disallow the whole of them, and only require the substance, that is a direct averment of those facts and circumstances which constitute the crime, to be set forth. It is to be remarked that the

act directs the court to proceed to judgment, without regard to two things—one of the form, the other refinement.” *State v. Hester*, 122 N.C. 1047, 29 S.E. 380 (1898). See *State v. Barnes*, 122 N.C. 1031, 29 S.E. 381 (1898), which uses the same language. See also *State v. Hedgecock*, 185 N.C. 714, 117 S.E. 47 (1923); *State v. Switzer*, 187 N.C. 88, 121 S.E. 43 (1924); *Ryals v. Carolina Contracting Co.*, 219 N.C. 479, 14 S.E.2d 531 (1941) (dis. op.).

This section and § 15-155 were passed to forbid refinements and technicalities which, without being any aid to the innocent, brought the administration of justice into disrepute. *State v. Leeper*, 146 N.C. 655, 61 S.E. 585 (1908).

The whole purpose of the law is to administer justice and that law and order and orderly government may at all times be maintained. *State v. Walls*, 211 N.C. 487, 191 S.E. 232 (1937).

**Quashing Indictments Not Favored.** — Quashing indictments is not favored. It releases recognizances and sets the defendant at large where, it may be, he ought to be held to answer upon a better indictment, though allowable, where it will put an end to the prosecution altogether, and advisable where it appears that the court has not jurisdiction, or where the matter charged is not indictable in any form. . . . It is, therefore, a general rule that no indictment which charges the higher offenses, as treason or felony or those crimes which immediately affect the public at large, as perjury, forgery, etc., will be thus summarily dealt with. The example is a bad one, and the effect upon the public injurious, to allow the defendant to escape upon matters of form. *State v. Colbert*, 75 N.C. 368 (1876). See *State v. Flowers*, 109 N.C. 841, 13 S.E. 718 (1891).

**Approved Forms Should be Followed.** — This section was enacted to prevent mis-carriage of justice, but not to encourage prosecuting officers to try experiments with new forms, or to excuse them from the duty of ascertaining and following those which have been approved by long use or by statute. The object of the statute in disregarding refinements and informalities is to secure trials upon the merits, and solicitors will best serve that end by observing approved forms so as not to raise unnecessary questions as to what are refinements and informalities and what are indispensable allegations. *State v. Barnes*, 122 N.C. 1031, 29 S.E. 381 (1898); *State v. Marsh*, 132 N.C. 1000, 43 S.E. 828 (1903); *State v. Hammonds*, 241 N.C. 226, 85 S.E.2d 133 (1954).

Applied in *State v. Teeter*, 264 N.C. 162, 141 S.E.2d 253 (1965).

## II. GENERAL EFFECT.

**Liberal Construction.** — This section has received a very liberal construction, and its efficacy has reached and healed numerous defects in the substance as well as in form of indictment. *State v. Smith*, 63 N.C. 234 (1869); *State v. Carpenter*, 173 N.C. 767, 92 S.E. 373 (1917).

Under this section bills and warrants are no longer subject to quashal “by reason of any informality or refinement.” *State v. Anderson*, 208 N.C. 771, 182 S.E. 643 (1935); *State v. Dale*, 218 N.C. 625, 12 S.E.2d 556 (1940).

This section provides against quashal for mere informality or refinement, and judgments are no longer stayed or reversed for nonessential or minor defects. *State v. Davenport*, 227 N.C. 475, 42 S.E.2d 686 (1947).

This section has received a very liberal construction. *State v. Greer*, 238 N.C. 325, 77 S.E.2d 917 (1953).

**This section does not dispense with requirement that essential elements of offense must be charged.** *State v. Gibbs*, 234 N.C. 259, 66 S.E.2d 883 (1951); *State v. Nugent*, 243 N.C. 100, 89 S.E.2d 781 (1955); *State v. Sossamon*, 259 N.C. 374, 130 S.E.2d 638 (1963).

**Plain, Intelligible and Explicit Charge Sufficient.** — The current is all one way, sweeping away by degrees “informalities and refinements,” until a plain, intelligible and explicit charge is all that is now required in any criminal proceeding. *State v. Smith*, 63 N.C. 234 (1869); *State v. Caylor*, 178 N.C. 807, 101 S.E. 627 (1919). See also *State v. Everhardt*, 203 N.C. 610, 166 S.E. 738 (1932); *State v. Howley*, 220 N.C. 113, 16 S.E.2d 705 (1941).

If a warrant is sufficiently intelligible and explicit to (1) inform the defendant of the charge he must answer, (2) enable him to prepare his defense, and (3) sustain the judgment, it meets the requirements of this section. *State v. Sumner*, 232 N.C. 386, 61 S.E.2d 84 (1950).

All that is required in a warrant or bill of indictment, since the adoption of this section, is that it be sufficient in form to express the charge against the defendant in a plain, intelligible, and explicit manner, and to contain sufficient matter to enable the court to proceed to judgment and thus bar another prosecution for the same offense. *State v. Hammonds*, 241 N.C. 226, 85 S.E.2d 133 (1954); *State v. Anderson*, 259 N.C. 499, 130 S.E.2d 857 (1963).

An indictment following substantially



the language of the statute is sufficient only when it thereby charges the essential elements of the offense in a plain, intelligible and explicit manner, and if the statutory words fail to do this, they must be supplemented in the indictment by other allegations which explicitly and accurately set forth every essential element of the offense with such exactitude as to leave no doubt in the minds of the accused and the court as to the specific offense intended to be charged. *State v. Eason*, 242 N.C. 59, 86 S.E.2d 774 (1955); *State v. Jordan*, 247 N.C. 253, 100 S.E.2d 497 (1957); *State v. Sossamon*, 259 N.C. 374, 130 S.E.2d 638 (1963).

A bill of indictment that charges "in plain, intelligible and explicit manner," under this section, the criminal offense the accused is "put to answer," affords the protection guaranteed by N. C. Const., Art. I, §§ 11, 12. *State v. Helms*, 247 N.C. 740, 102 S.E.2d 241 (1958).

A warrant sufficient to inform a person of the offense with which he is charged and adequate to protect him against further prosecution for that offense is sufficient. *State v. Daniel*, 255 N.C. 717, 122 S.E.2d 704 (1961).

A joint indictment of two defendants for murder charged that defendants "of his malice aforethought" committed the act. Held: The use of the word "his" instead of "their" is insufficient ground for arresting the judgment, informalities and refinements being disregarded if the indictment is sufficient to inform defendants of the charge against them and to enable them to prepare their defense, and to protect them from another prosecution. *State v. Linney*, 212 N.C. 739, 194 S.E. 470 (1938).

A charge of the receipt by defendant of official ballots, knowing that he had no legal right to them, amounts to a charge of interference with the duty of the county board of elections to safely keep the ballots until time for delivery to the registrars, within the provisions of this section, and the bill of indictment should not have been quashed because it failed to charge the manner in which the election officials were interfered with. *State v. Abernethy*, 220 N.C. 226, 17 S.E.2d 25 (1941).

**Same—Describing Property.** — The description in an indictment must be in the common and ordinary acceptance of property and with certainty sufficient to enable the jury to say that the article proved to be stolen is the same, and to enable the court to see that it is the subject of larceny and also to protect the defendant in any subsequent prosecution for the same offense. *State v. Campbell*, 76 N.C. 261

(1877); *State v. Martin*, 82 N.C. 672 (1880); *State v. Caylor*, 178 N.C. 807, 101 S.E. 627 (1919).

The Supreme Court on its own motion directed an arrest in judgment where indictments for larceny and receiving stolen property merely used the word "meat" in describing property taken, since the description was fatally defective. *State v. Nugent*, 243 N.C. 100, 89 S.E.2d 781 (1955).

**Merely charging in general terms a breach of the statute and referring to it in the indictment is not sufficient.** *State v. Sossamon*, 259 N.C. 374, 130 S.E.2d 638 (1963).

**Following Words of Statute.**—Where an indictment follows the words of a statute it is sufficient under this section. *State v. Harrison*, 145 N.C. 408, 59 S.E. 867 (1907); *State v. Leeper*, 146 N.C. 655, 61 S.E. 585 (1908). See also *State v. Davis*, 203 N.C. 47, 164 S.E. 732 (1932).

If a warrant avers facts which constitute every element of an offense, it is not necessary that it be couched in the language of the statute. *State v. Anderson*, 259 N.C. 499, 130 S.E.2d 857 (1963).

**Rule Also Applied in Defendant's Favor.**—Although the rule prohibiting reliance upon technicalities applies only against defendants, it is in accordance with the spirit of the section that it should be invoked in their favor also, for example as to the form of defendant's objection to the indictment. *State v. Wood*, 175 N.C. 809, 95 S.E. 1050 (1913).

**An indictment for an offense created by statute must be framed upon the statute, and this fact must distinctly appear upon the face of the indictment itself; and in order that it shall so appear, the bill must either charge the offense in the language of the act, or specifically set forth the facts constituting the same.** *State v. Gibbs*, 234 N.C. 259, 66 S.E.2d 883 (1951).

**Offense Not Charged in Alternative.**—An indictment charging that defendant did unlawfully and wilfully build or install a septic tank, without procuring a permit and having the tank inspected as required by law, should not be quashed on the ground that the offense charged is alleged in the alternative, since the words "build" and "install" in the sense in which they were used in the ordinance, the violation of which is alleged in the indictment, are synonymous. *State v. Jones*, 242 N.C. 563, 89 S.E.2d 129 (1955).

**Motion in Arrest of Judgment.**—A motion in arrest of judgment after conviction, on the ground that the bill of indictment is defective, will not be granted unless it appears that the bill is so defective that

judgment cannot be pronounced upon it. *State v. Francis*, 157 N.C. 612, 72 S.E. 1041 (1911); *State v. Ratliff*, 170 N.C. 707, 86 S.E. 997 (1915); *State v. Sauls*, 190 N.C. 810, 130 S.E. 848 (1925).

And where sufficient matter appears on the face of a bill of indictment to enable the court to proceed to judgment, an arrest of judgment is forbidden by this section. *State v. Darden*, 117 N.C. 697, 23 S.E. 106 (1895).

A judgment may be arrested only for some error or defect appearing on the face of the record. *State v. Eason*, 242 N.C. 59, 86 S.E.2d 774 (1955).

A motion in arrest of judgment should have been granted where indictment for resisting a public officer failed to identify the public officer and did not point out even in a general way the manner in which the defendant resisted. *State v. Eason*, 242 N.C. 59, 86 S.E.2d 774 (1955).

A motion in arrest of judgment was properly denied where the indictment charged substantially in the language of the statute that the defendant drove a motor vehicle without lights during the period from a half hour after sunset to a half hour before sunrise, and further charged the essential elements of the offense in a plain, intelligible, and explicit manner. *State v. Eason*, 242 N.C. 59, 86 S.E.2d 774 (1955).

Where the defendant thinks an indictment fails to impart information sufficiently specific as to the nature of the charge he may, before trial, move the court to order that a bill of particulars be filed, and the court will not arrest the judgment after verdict where he attempts to reserve his fire until he takes first the chance of acquittal. *State v. Tessnear*, 254 N.C. 211, 118 S.E.2d 393 (1961).

**Indictment Not Quashed for Mere Informality or Minor Defects.**—In light of the provisions of this section, it is the practice of the Supreme Court not to sustain motions to quash bills of indictment for mere informality or minor defects which do not affect the merits of the case. *State v. Brady*, 273 N.C. 675, 75 S.E.2d 791 (1953).

**Indictment under Private Law.**—Upon an indictment under a private statute, it is sufficient if the same is set forth by chapter and date and its material provisions incorporated in the indictment. *State v. Heaton*, 77 N.C. 505 (1877).

**Does Not Supply Essential Averments.**—By the many adjudications construing this section it has been definitely settled that the section neither supplies nor remedies the omission of any distinct averment

of any fact or circumstance which is an essential constituent of the offense charged. *State v. Cole*, 202 N.C. 592, 163 S.E. 594 (1932). See *State v. Tarlton*, 208 N.C. 734, 182 S.E. 481 (1935); *State v. Johnson*, 220 N.C. 773, 18 S.E.2d 358 (1942) (dis. op.).

**Where the indictment contains sufficient matter to enable the court to proceed to judgment** a motion to quash for duplicity or indefiniteness is properly refused, and a motion to quash for redundancy or inartificiality is addressed to the sound discretion of the trial court. *State v. Davis*, 203 N.C. 13, 164 S.E. 737 (1932); *State v. Davenport*, 227 N.C. 475, 42 S.E.2d 686 (1947).

**Prisoner Is Held Although Indictment Is Defective.**—Where the indictment should have been quashed because it was defective in form, the prisoner could still be held for a proper bill under this section. *State v. Callett*, 211 N.C. 563, 191 S.E. 27 (1937).

**Applied in** *State v. Blanton*, 227 N.C. 517, 42 S.E.2d 663 (1947); *State v. Avery*, 236 N.C. 276, 72 S.E.2d 670 (1952); *State v. Smith*, 240 N.C. 99, 81 S.E.2d 263 (1954); *State v. Cruse*, 253 N.C. 456, 117 S.E.2d 49 (1960).

**Quoted in** *State v. Wilson*, 218 N.C. 769, 12 S.E.2d 654 (1941).

**Cited in** *State v. Beal*, 199 N.C. 278, 154 S.E. 604 (1930); *State v. Puckett*, 211 N.C. 66, 189 S.E. 183 (1937); *State v. Miller*, 231 N.C. 419, 57 S.E.2d 392 (1950); *State v. Felton*, 239 N.C. 575, 80 S.E.2d 625 (1954); *State v. Bisette*, 250 N.C. 514, 108 S.E.2d 858 (1959); *State v. Brewer*, 258 N.C. 533, 129 S.E.2d 262 (1963).

### III. DEFECTS CURED.

#### A. In General.

**Superfluous Words Disregarded.**—The use of superfluous words in a bill of indictment will be disregarded. *State v. Guest*, 100 N.C. 410, 6 S.E. 253 (1888); *State v. Arnold*, 107 N.C. 861, 11 S.E. 990 (1890); *State v. Darden*, 117 N.C. 697, 23 S.E. 106 (1895); *State v. Piner*, 141 N.C. 760, 53 S.E. 305 (1906); *State v. Wynne*, 151 N.C. 644, 65 S.E. 459 (1909).

**Variance Must Be Material to Vitiolate.**—A variance now, since this section was passed, to be fatal must be substantial and material. *State v. Ridge*, 125 N.C. 655, 34 S.E. 439 (1899).

**Immaterial Words May Be Omitted.**—The inadvertent omission of words not affecting the substances of the charge or prejudicing the defendant is not fatal. *State v. Burke*, 108 N.C. 750, 12 S.E. 1000 (1891), and cases there cited. *State v. Ratliff*, 170 N.C. 707, 86 S.E. 997 (1915).

**Stripping Nonessential Words from Warrant.** — A warrant which, stripped of nonessential words, charges defendant with unlawful possession of a quantity of non-tax-paid whiskey, is sufficient to survive a motion to quash. *State v. Camel*, 230 N.C. 426, 53 S.E.2d 313 (1949).

**Endorsement by Grand Jury Unnecessary.** — No endorsement on a bill of indictment by the grand jury is necessary. The record that it was presented by the grand jury is sufficient in the absence of evidence to impeach it. *State v. McBroom*, 127 N.C. 528, 37 S.E. 193 (1900), overruled. *State v. Sultan*, 142 N.C. 569, 54 S.E. 841 (1906); *State v. Long*, 143 N.C. 670, 57 S.E. 349 (1907).

#### B. Omissions and Mistakes.

**In the Complaint.** — The omission of the name of the party in the complaint, against whom a criminal offense is charged, will not of itself invalidate the indictment, when the warrant of arrest thereto attached and referred to contains his name and clearly indicates him as the person charged, the complaint and warrant being read together, and in this way they are sufficient in form to proceed to judgment upon conviction. *State v. Poythress*, 174 N.C. 809, 93 S.E. 919 (1917).

**In Describing a Lease.** — In describing a lease the omission of the word "year" after the word "one," is one of the informalities cured by this section. *State v. Walker*, 87 N.C. 541 (1882).

**Incorrect Spelling.** — Charging that one committed a crime in the "count aforesaid" instead of county aforesaid is an informality which is cured by this section. *State v. Smith*, 63 N.C. 234 (1869); *State v. Evans*, 69 N.C. 40 (1873).

**Wrong County in Caption.** — A misrecital of the proper county in the caption of an indictment furnishes no ground for arrest of judgment, and it seems that such an indictment would have been sufficient even before this section was adopted. *State v. Sprinkle*, 65 N.C. 463 (1871); *State v. Davis*, 225 N.C. 117, 33 S.E.2d 623 (1945).

**Omission of Caption.** — The omission of the caption of a bill of indictment does not constitute ground for arrest of judgment. *State v. Davis*, 225 N.C. 117, 33 S.E.2d 623 (1945).

**Name of Court Incorrect.** — Describing the court in which the false oath is alleged to have been taken as "before Joseph Z. Pratt, a justice of the peace, in and for said county," instead of as "a court of a justice of the peace for township A, of Chowan County," is not a substantial variance from the true description and is cured

by this section. *State v. Davis*, 69 N.C. 495 (1873).

**Failure to Repeat Names in Charging Sciencer.** — Where defendants contended that a count in the indictment charging receiving stolen goods was fatally defective in that the names of defendants were not repeated in charging sciencer, it was held that the defect was merely an informality or refinement not sufficient to support a quashal of the indictment, the charge being plain, explicit and sufficient to enable the court to proceed to judgment. *State v. Whitley*, 208 N.C. 661, 182 S.E. 338 (1935).

**Ownership of Property in Arson.** — In a prosecution under §§ 14-5, 14-65, an indictment stating that the defendant procured another to burn a certain house owned by the defendant and another as tenants in common is sufficient, and the fact that the same parties owned other houses in like capacity is not ground for demurrer or quashal. *State v. McKeithan*, 203 N.C. 494, 166 S.E. 336 (1932).

**Omission of Defendant's Name from Affidavit.** — Where defendant's name appears in the warrant which refers to the affidavit, forming a part thereof, the omission of defendant's name from the affidavit is not a fatal defect. However, an affidavit form which fails to name the person charged is disapproved. *State v. St. Clair*, 246 N.C. 183, 97 S.E.2d 840 (1957).

**Reference to a specific statute** upon which the charge in a warrant is laid is not necessary to its validity. *State v. Anderson*, 259 N.C. 499, 130 S.E.2d 857 (1963).

**Or to Statute That Is Not Pertinent.** — Where a warrant charges a criminal offense but refers to a statute that is not pertinent, such reference does not invalidate the warrant. *State v. Anderson*, 259 N.C. 499, 130 S.E.2d 857 (1963).

#### C. Allegations Differing from Proof.

**Names of Parties.** — Where the indictment charged an assault, etc., upon "Lila" Hatcher, and the evidence tended to show that it was made upon "Liza" Hatcher, the variance is immaterial. *State v. Drakeford*, 162 N.C. 667, 78 S.E. 308 (1913).

Where indictment alleged that Thomas R. Robertson was defendant, and the proof was that "Thomas Robertson" was the defendant in said action and there was evidence of the identity of Thomas Robertson and Thomas R. Robertson, this is an informality cured by the section. *State v. Hester*, 122 N.C. 1047, 29 S.E. 380 (1893).

In an indictment for murder, the assault is charged to have been made on one "N.



S. Jarrett," and in subsequent parts of the indictment he is described as "Nimrod S. Jarrett." Held, to be no variance. *State v. Henderson*, 68 N.C. 348 (1873).

**Name of Article Stolen.**—In an indictment for larceny, when the article stolen is described as a "calf" skin and is proven on the trial to be a "kip" skin: Held, no variance between the allegation and the proof. *State v. Campbell*, 76 N.C. 261 (1877).

**Object Used in Commission of Assault.**

§ 15-154. **No quashal for grand juror's failure to pay taxes or being party to suit.**—No indictment shall be quashed nor shall judgment thereon be arrested by reason of the fact that any member of the grand jury finding such bills of indictment had not paid his taxes for the preceding year, or was a party to any suit pending and at issue. (1907, c. 36; C. S., s. 4624.)

**Cross Reference.** — As to when exceptions for disqualification of grand jurors should be made, see § 9-26.

§ 15-155. **Defects which do not vitiate.**—No judgment upon any indictment for felony or misdemeanor, whether after verdict, or by confession, or otherwise, shall be stayed or reversed for the want of the averment of any matter unnecessary to be proved, nor for omission of the words "as appears by the record," or of the words "with force and arms," nor for the insertion of the words "against the form of the statutes" instead of the words "against the form of the statute," or vice versa; nor for omission of the words "against the form of the statute" or "against the form of the statutes," nor for omitting to state the time at which the offense was committed in any case where time is not of the essence of the offense, nor for stating the time imperfectly, nor for stating the offense to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened; nor for want of a proper and perfect venue, when the court shall appear by the indictment to have had jurisdiction of the offense. (7 Hen. VIII, c. 8; R. C., c. 35, s. 20; Code, s. 1189; Rev., s. 3255; C. S., s. 4625.)

**Cross Reference.** — As to other defects which do not vitiate an indictment, see the notes under § 15-153 and under the various sections dealing with the particular crimes.

**In General.** — The refined technicalities of the procedure at common law, in both civil and criminal cases, have almost entirely, if not quite, been abolished by our statute. *State v. Hedgecock*, 185 N.C. 714, 117 S.E. 47 (1923).

The modern tendency is against technical objections which do not affect the merits of the case. Hence judgments are not to be stayed or reversed for nonessential or minor defects. *State v. Anderson*, 208 N.C. 771, 182 S.E. 643 (1935).

**Section Cures Formal Defects.** — This section is intended to cure only formal defects in the indictment after judgment, and not omissions of averments necessary to enable the court to give judgment intelligently. *State v. Wise*, 66 N.C. 120 (1872).

—Evidence that defendant committed the assault with a "brick or a rock or what" was not fatal variance with a warrant charging that the assault was committed with a brick, the evidence being sufficient to justify the jury in inferring that the assault was committed with a brick as charged, and there being no element of surprise in the evidence, especially since defendant's defense was that of an alibi. *State v. Hobbs*, 216 N.C. 14, 3 S.E.2d 431 (1939).

Nothing in § 15-153 or in this section dispenses with the requirement that the essential elements of the offense must be charged. *State v. Sossamon*, 259 N.C. 374, 130 S.E.2d 638 (1963).

The words "with force and arms" constitute a formal phrase traditionally included in bills of indictment, but have no significance as an element of the specific crime charged in the bill of indictment. *State v. Acrey*, 262 N.C. 90, 136 S.E.2d 201 (1964).

**Locality May Be Omitted.** — Formerly failure to allege and prove the locality, appropriate to the forum, was fatal, because essential to the jurisdiction, both in civil and criminal actions, but this has been wisely reversed by this section. *State v. Long*, 143 N.C. 670, 57 S.E. 349 (1907).

**Other Expressions Omitted.** — Omitting the statement, that the "prisoner, not having the fear of God before his eyes, but being moved and seduced by the instigations

of the devil," and the further omission of an averment that the "deceased was in the peace of God and the State," are not fatal defects. *State v. Howard*, 92 N.C. 772 (1885).

**When Time Need Not Be Charged.** — Where time is not of the essence of a crime, "the omission to charge any date" is immaterial by this section, though the allegation of time can do no harm. *State v. Taylor*, 83 N.C. 602 (1880); *State v. Arnold*, 107 N.C. 861, 11 S.E. 990 (1890); *State v. Peters*, 107 N.C. 876, 12 S.E. 74 (1890); *State v. Williams*, 117 N.C. 753, 23 S.E. 250 (1895).

Thus time is not of the essence of carrying a concealed weapon, and it may be shown at a previous time to that alleged in the bill. *State v. Spencer*, 185 N.C. 765, 117 S.E. 803 (1923).

When time is not of the essence of the offense, leaving out the date does not make the bill of indictment defective, and the crime of receiving stolen goods is not one of the offenses in which time is of the essence. *State v. Tessnear*, 254 N.C. 211, 118 S.E.2d 393 (1961).

The time named in a bill of indictment is not usually an essential ingredient of the crime charged, and the State may prove that it was in fact committed on some other date. *State v. Whittemore*, 255 N.C. 583, 122 S.E.2d 396 (1961); *State v. Wilson*, 264 N.C. 373, 141 S.E.2d 801 (1965).

But this salutary rule, preventing a defendant who does not rely on time as a defense from using a discrepancy between the time named in the bill and the time shown by the evidence for the State, cannot be used to ensnare a defendant and thereby deprive him of an opportunity to adequately present his defense. *State v. Whittemore*, 255 N.C. 583, 122 S.E.2d 396 (1961); *State v. Wilson*, 264 N.C. 373, 141 S.E.2d 801 (1965).

Indictment alleging violation of § 14-54 "on or about the . . . day of June, A. D. 1956" was not fatally defective. Time not being of the essence of the offense charged, it was not necessary that the exact date be specified. *State v. Andrews*, 246 N.C. 561, 99 S.E.2d 745 (1957).

While an appeal from conviction in a recorder's court upon a warrant, charging unlawful possession on a certain date of intoxicating liquors for the purpose of sale, was pending in the superior court, that court had jurisdiction to try defendant on a bill of indictment of a later date charging the same offense, where the record contains nothing to show that the offenses are

identical. Time is not of the essence and need not be specified in the indictment. *State v. Suddreth*, 223 N.C. 610, 27 S.E.2d 623 (1943).

**Failure to specify a particular day in an indictment for abandonment** is not fatal especially in view of an instruction that the jury should consider only such evidence as tends to show that the defendant violated the statute after a particular date. *State v. Jones*, 201 N.C. 424, 160 S.E. 468 (1931).

**Time of Birth in Bastardy Proceeding.** — Indictment, in a bastardy proceeding, which states that the child was born on August 13, 1941, whereas the evidence was that the birth occurred on November 13, 1940, is not fatally defective. *State v. Moore*, 222 N.C. 356, 23 S.E.2d 31 (1942).

**Conclusion Simplified.** — The formal conclusion, "against the peace and dignity of the State," and "against the form of the statute," etc., are not necessary in an indictment for any offense whatever, but are mere surplusage. *State v. Kirkman*, 104 N.C. 911, 10 S.E. 312 (1889), overruling *State v. Joyner*, 81 N.C. 534 (1879); *State v. Sykes*, 104 N.C. 694, 10 S.E. 191 (1889); *State v. Peters*, 107 N.C. 876, 12 S.E. 74 (1890); *State v. Dudley*, 182 N.C. 822, 109 S.E. 63 (1921).

That an indictment concludes against the form of the statute instead of statute, is no ground for an arrest of judgment. *State v. Smith*, 63 N.C. 234 (1869).

An indictment concluding against the "force" instead of the "form" of the statute is sufficient under this section. *State v. Davis*, 80 N.C. 385 (1879).

**Variance.** — In a prosecution of defendant for being an accessory before the fact of murder, variance of a few days between the indictment and proof as to the day the murder was committed is not fatal under this section. *State v. Gore*, 207 N.C. 618, 178 S.E. 209 (1935).

It is to the girl's first act of intercourse with a man when she is under sixteen years of age, that the law attaches criminality on the part of the man, and a variance between allegation and proof as to time is not material where no statute of limitations is involved. *State v. Trippe*, 222 N.C. 600, 24 S.E.2d 340 (1943).

**Jurisdiction.** — Where the jurisdiction of the court is not ousted on the face of the indictment the position that the court does not have jurisdiction is not available on a plea in abatement. *State v. Davis*, 203 N.C. 13, 164 S.E. 737 (1932).

**A charge in a murder prosecution in the alternative was not a vitiating defect, and**

the motion in arrest after verdict was properly denied, such motion being available only for vitiating defects upon the record proper. *State v. Puckett*, 211 N.C. 66, 189 S.E. 183 (1937).

Cited in *State v. Dale*, 218 N.C. 625, 12

S.E.2d 556 (1940); *State v. Wilson*, 218 N.C. 769, 12 S.E.2d 654 (1941); *State v. Hall*, 251 N.C. 211, 110 S.E.2d 868 (1959); *State v. Whitley*, 264 N.C. 742, 142 S.E.2d 600 (1965).

## ARTICLE 15A.

### *Investigation of Offenses Involving Abandonment and Nonsupport of Children.*

**§ 15-155.1. Reports to solicitors of aid to dependent children and illegitimate births.** — The State Board of Public Welfare, by and through the Director of Public Assistance, shall promptly after June 19, 1959, make a report to each solicitor of superior court, setting out the names and addresses of all mothers who reside in his solicitorial district and are recipients of aid to dependent children under the provisions of part 2, article 3, chapter 108 of the General Statutes. Such report shall in some manner show the identity of the unwed mothers and shall set forth the number of children born to each said mother. Such a report shall also be made monthly thereafter setting out the names and addresses of all such mothers who reside in the district and who may have become recipients of aid to dependent children since the date of the last report. (1959, c. 1210, s. 1.)

**Editor's Note.**—Section 5 of the act inserting this article provides that its provisions shall not apply to the counties of Gaston and Mecklenburg.

For provision prohibiting action under

this article if such action will result in termination of payments of federal funds to North Carolina for public assistance, see § 108-76.2.

**§ 15-155.2. Solicitor to take action on report of aid to dependent child or illegitimate birth.**—(a) Upon receipt of such reports as are provided for in G.S. 15-155.1, the solicitor of superior court may make an investigation to determine whether the mother of an illegitimate child or who is a recipient of aid to a dependent child or children, has abandoned, is wilfully neglecting or is refusing to support and maintain the child within the meaning of G.S. 14-326 or G.S. 49-2 or is diverting any part of the funds received as aid to a dependent child to any purpose other than for the support and maintenance of such dependent child in violation of G.S. 108-76.1. In making this investigation the solicitor is authorized to call upon:

- (1) Any county board of public welfare or the State Board of Public Welfare for personal, clerical or investigative assistance and for access to any records kept by either such board and relating to the matter under investigation and such boards are hereby directed to assist in all investigations hereunder and to furnish all records relating thereto when so requested by the solicitor;
- (2) The board of county commissioners of any county within his district for legal or clerical assistance in making any investigation or investigations in such county and such boards are hereby authorized to furnish such assistance in their discretion; and
- (3) The solicitor of any inferior court in his district for personal assistance in making any investigation or investigations in the county in which the court is located and any solicitor so called upon is hereby authorized to furnish such assistance by and with the consent of the board of county commissioners of the county in which the court is located, which board shall provide and fix his compensation for assistance furnished.

(b) If following the investigation the solicitor has reasonable grounds to believe that a violation of G.S. 49-2, 14-326, 108-76.1 or any other criminal



offense is being or has been committed, he shall send to the grand jury of the county in which he believes the offense is being or has been committed a bill of indictment charging the commission of the offense. Sole and exclusive jurisdiction of offenses discovered as a result of investigations under this section shall be vested in the superior court notwithstanding any other provisions of law, whether general, special or local. Provided nothing in this article shall be construed to take from the inferior courts any authority or responsibility now vested in them by existing law or to compel the solicitor to again prosecute a crime that has been disposed of in the inferior courts.

(c) If, however, as a result of the investigation provided for in subsection (a) of this section the solicitor has reason to believe that the mother of the illegitimate child or who is recipient of aid to a dependent child, is a mental defective or suffers from a mental disease, mental disorder or mental illness within the meaning of G.S. 122-35.1, he shall make the affidavit provided for in G.S. 122-42 looking to the commitment of such person to the State hospital pursuant to article 3, chapter 122 of the General Statutes. (1959, c. 1210, s. 1.)

**§ 15-155.3. Disclosure of information by solicitor or agent.** — No such solicitor, assistant solicitor, or any attorney at law especially appointed to assist said solicitor, or any agent or employee of such solicitor's office shall disclose any information, record, report, case history or any memorandum or document or any information contained therein, which may relate to or be connected with the mother or father of any illegitimate child, or any illegitimate child, unless in the opinion of such solicitor it is necessary or is required in the prosecution and performance of such solicitor's duties as set forth in the provisions of this article. (1959, c. 1210, s. 4.)

## ARTICLE 16.

### *Trial before Justice.*

**§ 15-156. In cases of final jurisdiction.**—When the justice is satisfied that he has jurisdiction, if no jury is asked for, he shall proceed to determine the case, and shall either acquit the accused or find him guilty, and sentence him to such punishment as the case may require, not to exceed in any case a fine of fifty dollars or imprisonment in the county jail for thirty days. (1868-9, c. 178, subc. 4, s. 8; Code, s. 897; Rev., s. 3256; C. S., s. 4626.)

**Cross References.**—As to jurisdiction of justice in criminal actions, see § 7-129 and notes. As to divesting inferior courts of exclusive original jurisdiction in certain criminal actions, see § 7-64.

**An Adversary Proceeding Intended.**—It was contemplated there should be an adversary proceeding in all trials of criminal cases before a justice of the peace, especially when the justice assumes final juris-

diction. It was never intended that the accused should be also the accuser and the sole witness against himself. Such a proceeding would not conduce to the discovery of truth, and the detection and punishment of crime, which is the real object to be obtained, and would oftener than otherwise defeat the very ends of justice. *State v. Moore*, 136 N.C. 581, 48 S.E. 573 (1904).

**§ 15-157. Trial by jury, if demanded.**—If either the complainant or the accused shall ask for it, the justice shall allow a trial by jury, as is provided in civil actions before justices of the peace. (1868-9, c. 178, subc. 4, s. 9; Code, s. 898; Rev., s. 3257; C. S., s. 4627.)

**Cross References.**—As to constitutional provisions, see N.C. Constitution, Art. I, § 13, and U.S. Constitution, Art. III, § 2,

cl. 3. As to trial by jury before a justice, see § 7-150 et seq. See annotations under § 15-177.

**§ 15-158. What submitted to jury.**—In case a trial by jury is had, the justice shall submit to the jury in each case simply the question of the guilt or in-

nocence of the accused of the offense charged, and shall enter the verdict on his docket, and adjudge accordingly. (1868-9, c. 178, subc. 4, s. 10; Code, s. 899; Rev., s. 3258; C. S., s. 4628.)

**§ 15-159. Commitment after judgment.** — The commitment to the county prison shall set forth—

- (1) The name of the guilty person.
- (2) The nature of the offense of which he is convicted and the date of the trial.
- (3) The period of his imprisonment.
- (4) It shall be directed to the sheriff of the county, or to the keeper of the county jail, and shall direct him to keep the prisoner for the time stated, or until discharged by law.
- (5) The name of the constable or other officer required to execute it.
- (6) It shall be signed by the justice and be dated. (1868-9, c. 178, subc. 4, s. 17; Code, s. 1238; Rev., s. 3259; C. S., s. 4629.)

**Cross Reference.**—As to commitment of person charged with a crime, see § 15-125.

**Legality of Custody.**—When a prisoner, legally sentenced, is placed in charge of a special officer to convey to jail, the legality of his custody by the officer depends upon the validity of the special deputation of the officer, and not upon the sufficiency of the mittimus, which is to terminate his duties. *State v. Armistead*, 106 N.C. 639, 10 S.E. 872 (1890).

**Same — Where Prisoner Taken from Officer.** — It is a criminal offense to take, by force, from the custody of an officer a prisoner legally committed to his charge to convey to jail, and it is no defense that the mittimus does not comply, in all respects, with the requirements of this section. *State v. Armistead*, 106 N.C. 639, 10 S.E. 872 (1890).

**§ 15-160. Parties entitled to copy of papers; bar to indictment.**—The justice shall give to either party on request, and on payment of his lawful fee, a copy of the complaint and of his finding and sentence. Such finding and sentence may be pleaded in bar of any indictment subsequently found for the same offense. (1868-9, c. 178, subc. 4, ss. 13, 14; Code, ss. 902, 903; Rev., s. 3260; C. S., s. 4630.)

**Collusive Conviction Not a Bar.** — The conviction of a person before a justice of the peace which is collusive and not ad-

versary is not sufficient to sustain a plea of former conviction. *State v. Moore*, 136 N.C. 581, 48 S.E. 573 (1904).

**§ 15-161. Justice to make return of cases to superior court.**—It is the duty of each justice of the peace on or before the 25th day of each month to furnish the clerk of the superior court with a list of the names and offenses of all parties tried and finally disposed of by such justice of the peace, together with the papers in each case, in all criminal actions. No indictment shall be found against any party whose case has been finally disposed of by any justice of the peace: Provided, that this section shall not be deemed to extend or enlarge or otherwise affect the jurisdiction of the justice of the peace, except as provided by law.

The failure of any justice of the peace to file a report without just cause shown shall constitute a misdemeanor and shall be punishable in the discretion of the court. (1869-70, c. 110; Code, s. 906; Rev., s. 3261; C. S., s. 4631; 1955, c. 869.)

**Cross Reference.**—As to liability for failure to make return of cases to superior court, see § 14-231.

**When Report Unnecessary.** — A justice of the peace is not guilty of a violation of this section by failing to make report to

the clerk of the superior court when there have been no criminal cases disposed of by him within the time therein prescribed. *State v. Latham*, 110 N.C. 490, 14 S.E. 390 (1892).

## ARTICLE 17.

*Trial in Superior Court.***§ 15-162. Prisoner standing mute, plea of "not guilty" entered.—**

If any person, being arraigned upon or charged in any indictment for any crime, shall stand mute of malice or will not answer directly to the indictment, the court shall order the plea of "not guilty" to be entered on behalf of such person; and the plea so entered shall have the same force and effect as if such person had pleaded the same. (R. S., c. 35, s. 16; R. C., c. 35, s. 29; Code, s. 1198; Rev., s. 3262; C. S., s. 4632.)

**Deaf Mutes.**—Where, upon the arraignment of one for murder, it was suggested that the accused was a deaf mute, and was incapable of understanding the nature of a trial, and its incidents and his rights under it, it was held proper for a jury to be empanelled to try the truth of these suggestions, for the court to decline putting the prisoner on his trial. *State v. Harris*, 53 N.C. 136 (1860).

In *State v. Early*, 211 N.C. 189, 189 S.E. 668 (1937), the court, upon finding that defendant was a deaf mute, subpoenaed an interpreter, who after being duly sworn and after the reading of the indictment, interpreted and explained the indictment to defendant. After defendant had indicated to the interpreter that he understood the indictment, the interpreter translated the solicitor's question of whether defendant

was guilty or not guilty, and upon a negative reply given through the interpreter, a plea of not guilty was entered. It was held that there was no error on the arraignment of defendant or in the acceptance of his negative answer as a plea of not guilty.

**Changing Plea.** — Whether a prisoner may retract a plea of guilty and enter a plea of not guilty, or vice versa, is a matter for the sound legal discretion of the trial court. *State v. Branner*, 149 N.C. 559, 63 S.E. 169 (1908).

**Entry after Verdict.** — It is no error in the court below, on a trial of a defendant for larceny, "as upon a plea of not guilty," and after a verdict of guilty, to amend the record by inserting the plea of "not guilty." *State v. McMillan*, 68 N.C. 440 (1873).

**§ 15-162.1. Plea of guilty of first degree murder, first degree burglary, arson or rape.**—(a) Any person, when charged in a bill of indictment with the felony of murder in the first degree, or burglary in the first degree, or arson, or rape, when represented by counsel, whether employed by the defendant or appointed by the court under G.S. 15-4 and 15-5, may, after arraignment, tender in writing, signed by such person and his counsel, a plea of guilty of such crime; and the State, with the approval of the court, may accept such plea. Upon rejection of such plea, the trial shall be upon the defendant's plea of not guilty, and such tender shall have no legal significance whatever.

(b) In the event such plea is accepted, the tender and acceptance thereof shall have the effect of a jury verdict of guilty of the crime charged with recommendation by the jury in open court that the punishment shall be imprisonment for life in the State's prison; and thereupon, the court shall pronounce judgment that the defendant be imprisoned for life in the State's prison.

(c) Unless and until the State accepts such plea, no reference shall be made in open court at the time of arraignment or at any other time to the tender or proposed tender of such plea; and the fact of such tender shall not be admissible as evidence either for or against the defendant in the trial or at any other time and place. The defendant shall have the right to withdraw such plea, without prejudice of any kind, until such time as it is accepted by the State. (1953, c. 616.)

**Editor's Note.**—For brief comment on this section, see 31 N.C.L. Rev. 405 (1953).

**Applied in** *State v. Morrow*, 264 N.C. 77, 140 S.E.2d 767 (1965); *Edgerton v. North Carolina*, 239 F. Supp. 663 (E.D.N.C.

1965); *Edgerton v. North Carolina*, 230 F. Supp. 264 (E.D.N.C. 1964).

**Cited in** *State v. Manning*, 251 N.C. 1, 110 S.E.2d 474 (1959); *State v. Morrow*, 262 N.C. 592, 138 S.E.2d 245 (1964).



**§ 15-163. Peremptory challenges of jurors by defendant.**—Every person on joint or several trial for his life may make a peremptory challenge of fourteen jurors and no more; and in all joint or several trials for crimes and misdemeanors, other than capital, every person on trial shall have the right of challenging peremptorily, and without showing cause, six jurors and no more. And to enable defendants to exercise this right, the clerk in all such trials shall read over the names of the jurors on the panel, in the presence and hearing of the defendants and their counsel, before the jury shall be impaneled to try the issue; and the judge or other presiding officer of the court shall decide all questions as to the competency of jurors. (22 Hen. VIII, c. 14, s. 6; 1777, c. 115, s. 85, P. R.; 1801, c. 592, s. 1, P. R.; 1812, c. 833, P. R.; 1826, c. 9; R. S., c. 35, ss. 19, 21; R. C., c. 35, s. 32; 1871-2, c. 39; Code, s. 1199; 1887, c. 53; Rev., s. 3263; 1913, c. 31, s. 3; C. S., s. 4633; 1935, c. 475, s. 2.)

**Cross References.** — As to challenge for cause, see § 9-14 and notes, et seq. As to peremptory challenges in civil cases, see § 9-22.

**In General.** — Every criminal, charged with a crime affecting his life, has a right to challenge a certain number of jurors, without assigning any cause, and as many more as he can assign a good cause for. *State v. Patrick*, 48 N.C. 443 (1856).

**A Right to Exclude.**—The right of peremptory challenge is not a right to select but to exclude. *State v. Smith*, 24 N.C. 402 (1842); *State v. Banner*, 149 N.C. 519, 63 S.E. 84 (1908).

**Purpose.** — The legislative intent in the enactment of this section is to secure a reasonable and impartial verdict. *State v. Ashburn*, 187 N.C. 717, 122 S.E. 833 (1924).

**When Challenge Should Be Made.**—The time for a prisoner to make his challenge, is when the juror is tendered, and before the juror is sworn, or the oath is commenced. *State v. Patrick*, 48 N.C. 443 (1856).

A person charged with crime may, when called upon to plead to the bill of indictment, challenge the array; or he may, after his plea, challenge individual jurors for cause or peremptorily. *State v. Rorie*, 258 N.C. 162, 128 S.E.2d 229 (1962).

A defendant cannot wait until the jury has returned a verdict of guilty to challenge the competency of the jury to determine the question. *State v. Rorie*, 258 N.C. 162, 128 S.E.2d 229 (1962).

**Peremptory Challenges Limited to Four.**—A defendant, in an indictment for an offense other than capital, having only four peremptory challenges to jurors, cannot challenge a fifth juror peremptorily although he had first challenged one of the four for cause, which was properly disallowed. *State v. Hargrave*, 100 N.C. 484, 6 S.E. 185 (1888). This case was decided

prior to the 1935 amendment. A defendant is now allowed six peremptory challenges.—Ed. Note.

**Same—When Verdict of Manslaughter Asked.** — Where, upon the trial of an indictment for murder, the solicitor states that he should ask only for a verdict of manslaughter, no special venire was necessary, and the defendant is not entitled to more than four [now six] peremptory challenges. *State v. Hunt*, 128 N.C. 584, 38 S.E. 473 (1901); *State v. Caldwell*, 129 N.C. 682, 40 S.E. 85 (1901).

**Judge Determines Competency.**—Triers are now dispensed with, and the judge determines the facts as well as the legal sufficiency of the challenge based upon them. *State v. Kilgore*, 93 N.C. 533 (1885).

**Waiver of Objection by Not Using Challenges.** — If a juror is rejected upon an improper ground of challenge, made by the State, the prisoner cannot assign it for error, if a jury is obtained before he has exhausted his peremptory challenges. *State v. Potts*, 100 N.C. 457, 6 S.E. 657 (1888); *State v. Sultan*, 142 N.C. 569, 54 S.E. 841 (1906).

Where several defendants are tried together for a crime other than a capital felony each is entitled to four [now six] peremptory challenges to the jury, and where the court has ruled that the defense was a joint defense and has allowed but four [now six] peremptory challenges for all the defendants, a new trial will be granted upon appeal. *State v. Burleson*, 203 N.C. 779, 166 S.E. 905 (1932).

**Challenges Where Bills of Indictment Are Consolidated.**—Where several bills of indictment against a defendant are consolidated for trial, the defendant is entitled to but four [now six] peremptory challenges to the jury as provided by this section and not to four [now six] peremptory challenges for each bill, the consolidated bills being treated as separate counts of the

same bill. *State v. Alridge*, 206 N.C. 850, 175 S.E. 191 (1934).

Cited in *State v. Corl*, 250 N.C. 258, 108 S.E.2d 615 (1959).

**§ 15-164. Peremptory challenges by the State.**—In all capital cases the prosecuting officer on behalf of the State shall have the right to challenge peremptorily six jurors for each defendant, but shall not have the right to stand any jurors at the foot of the panel. The challenge must be made before the juror is tendered to the prisoner, and if he will challenge more than six jurors, he shall assign for his challenge a cause certain; and in all other cases of a criminal nature a challenge of four jurors shall be allowed in behalf of the State for each defendant, and challenge also for a cause certain, and in all cases of challenge for cause certain the same shall be inquired of according to the custom of the court. (33 Edw. I, c. 4; 1827, c. 10; R. C., c. 35, s. 33; Code, s. 1200; 1887, c. 53; Rev., s. 3264; 1907, c. 415; 1913, c. 31, s. 4; C. S., s. 4634; 1935, c. 475, s. 3.)

**Section Does Not Affect § 9-15.**—This section does not affect the application of § 9-15 to the trial of capital felonies. *State v. Ashburn*, 187 N.C. 717, 122 S.E. 833 (1924).

**Judge Cannot Extend Time.** — The discretionary power of the trial judge in respect to challenges is confined to challenges for cause, and he has no more authority to extend the time for making per-

emptory challenges beyond the limit fixed by this section than he has to allow more than four [now six] of such challenges. *State v. Fuller*, 114 N.C. 885, 19 S.E. 797 (1894).

**In a prosecution of two defendants jointly for offenses less than capital,** the State is entitled to challenge peremptorily four jurors for each defendant. *State v. Knight*, 261 N.C. 17, 134 S.E.2d 101 (1964).

**§ 15-165. Challenge to special venire same as to tales jurors.**—In the trial of all criminal cases, where a special venire shall be ordered, the same causes of challenge to the jurors summoned on the special venire shall be allowed as exist to tales jurors. (1887, c. 53; Rev., s. 3265; C. S., s. 4635.)

**Cross References.** — As to grounds for challenging tales jurors, see § 9-11. As to special venire in general, see § 9-29 et seq.

**Editor's Note.**—See 11 N.C.L. Rev. 219.

Cited in *State v. Lord*, 225 N.C. 354, 34 S.E.2d 205 (1945); *State v. Anderson*, 228 N.C. 720, 47 S.E.2d 1 (1948).

**§ 15-166. Exclusion of bystanders in trials for rape.**—In the trial of cases for rape and of assault with the intent to commit rape, the trial judge may, during the taking of the testimony of the prosecutrix, exclude from the courtroom all persons except the officers of the court, the defendant and those engaged in the trial of the case; and upon the preliminary hearing before a justice of the peace of the offenses above named, that officer may adopt a like course. (1907, c. 21; C. S., s. 4636.)

**§ 15-167. Extension of term of court by trial judge.** — Whenever a trial for a felony is in progress on the last Friday of any term of court and it appears to the trial judge that it is unlikely that such trial can be completed before five P. M. on such Friday, the trial judge may extend the term as long as in his opinion it shall be necessary for the purposes of the case, but he may recess court on Friday or Saturday of such week to such time on the succeeding Sunday or Monday as, in his discretion, he deems wise. The trial judge, in his discretion, may exercise the same power in the trial of any other cause under the same circumstances, except civil actions begun after Thursday of the last week. The length of time such court shall remain in session each day shall be in the discretion of the trial judge. Whenever a trial judge continues a term pursuant to this section, he shall cause an order to such effect to be entered in the minutes, which order may be entered at such time as the judge directs, either before or after he has extended the term. (1830, c. 22; R. C., c. 31, s. 16; C. C. P., s. 397; Code, s. 1229; 1893, c. 226; Rev., s. 3266; C. S., s. 4637; 1961, c. 181.)

**Section Constitutional.**—This section is constitutional. *State v. Adair*, 66 N.C. 298

(1872); *State v. Jefferson*, 66 N.C. 309 (1872); *State v. Taylor*, 76 N.C. 64 (1877);

*State v. Monroe*, 80 N.C. 373 (1879). See also *National Bank v. Gilmer*, 116 N.C. 684, 22 S.E. 2 (1895).

**Expiration of Term No Ground for Discharging Jury.**—The expiration of a term of court is no ground for discharging a jury before verdict, for the term may be continued for the purposes of the trial. *State v. McGimsey*, 80 N.C. 377 (1879).

**Special Term Extended.**—Where a trial began on Wednesday of the last week of a special term and the jury had not agreed upon a verdict on Saturday night, it was not improper for the trial judge to open and conduct the regular term on Monday

following and to continue the special term into that week for the purpose of receiving the verdict of the jury, since the rights of the parties were not prejudiced thereby. *National Bank v. Gilmer*, 116 N.C. 684, 22 S.E. 2 (1895).

**Daily entries on the journal during the trial of a felony**, stating the name of the case and that the court takes a recess "until 9:30 A. M. tomorrow," and the entry next day "court convened at 9:30 A. M. pursuant to recess," etc., in regular form, constitutes a sufficient compliance with this section. *State v. Harris*, 181 N.C. 600, 107 S.E. 466 (1921).

§ 15-168. **Justification as defense to libel.**—Every defendant who is charged by indictment with the publication of a libel may prove on the trial for the same the truth of the facts alleged in the indictment; and if it shall appear to the satisfaction of the jury that the facts are true, the defendant shall be acquitted of the charge. (R. C., c. 35, s. 26; Code, s. 1195; Rev., s. 3267; C. S., s. 4638.)

**Cross Reference.**—As to effect of publication in good faith and retraction by a newspaper, see § 99-2.

**Truth of Entire Charge Must Be Proved.**—Where the matter set out in the indictment is libellous, in order for the defendant to justify he must show that the entire charge imputed to the prosecutor is true. *State v. Lyon*, 89 N.C. 568 (1883).

**General Report Insufficient.**—In an indictment for a libel, it is not competent for the defendant to justify by proving that there was, and long had been, a general

report in the neighborhood, of the truth of his charge. *State v. White*, 29 N.C. 180 (1847).

**Proof of Specific Charge Necessary.**—Proof of the general bad character of an officer in other matters of which he had taken cognizance, will not be received to establish the truth of libellous charge in reference to a particular matter. *State v. Lyon*, 89 N.C. 568 (1883).

**Cited in** *Garrison v. Louisiana*, 379 U.S. 64, 85 Sup. Ct. 209, 13 L. Ed. 2d 125 (1964).

§ 15-169. **Conviction of assault, when included in charge.**—On the trial of any person for rape, or any felony whatsoever, when the crime charged includes an assault against the person, it is lawful for the jury to acquit of the felony and to find a verdict of guilty of assault against the person indicted, if the evidence warrants such finding; and when such verdict is found the court shall have power to imprison the person so found guilty of an assault, for any term now allowed by law in cases of conviction when the indictment was originally for the assault of a like character. (1885, c. 68; Rev., s. 3268; C. S., s. 4639.)

**Cross Reference.**—As to arbitrary right of jury to convict defendant of lesser degree of the crime charged, see § 15-170 and note thereto.

**Section Refers to Assault Generally.**—This section does not describe the kind of assault, but refers to an assault generally and without regard to its degree of punishment under the law. *State v. Smith*, 157 N.C. 578, 72 S.E. 853 (1911).

**When Section Applicable.**—This section and § 15-170 are applicable only where there is evidence tending to show that defendant is guilty of a crime of lesser degree than that charged in the indictment. *State v. Jackson*, 199 N.C. 321, 154 S.E.

402 (1930); *State v. Sawyer*, 224 N.C. 61, 29 S.E.2d 34 (1944); *State v. Jones*, 249 N.C. 134, 105 S.E.2d 513 (1958).

**What Indictment Includes.**—An indictment for any offense against the criminal law includes all lesser degrees of the same crime, known to the law; and conviction may be had of the lesser offense when the charge is inclusive of both. *State v. Williams*, 185 N.C. 685, 116 S.E. 736 (1923).

**Same—Murder.**—Under an indictment for murder, the defendant may be convicted either of murder in the first degree, murder in the second degree, or manslaughter, and even of assault with a deadly weapon, or simple assault, "if the



evidence shall warrant such finding" when he is not acquitted entirely. *State v. Williams*, 185 N.C. 685, 116 S.E. 736 (1923).

Notwithstanding the provisions of this section, when it is sought to fall back on the lesser offense of assault and battery or assault with a deadly weapon in case the greater offense of murder or manslaughter is not made out, the indictment for murder should be so drawn as necessarily to include an assault and battery or assault with a deadly weapon, or it should contain a separate count to that effect. *State v. Rorie*, 252 N.C. 579, 114 S.E.2d 233 (1960).

**Same—Rape.**—An indictment for rape, as this section declares, includes an assault against the person; and where there is evidence sufficient to warrant such finding, the jury may acquit of the felony of rape and return a verdict of guilty of a lesser criminal assault. *State v. Jones*, 249 N.C. 134, 105 S.E.2d 513 (1958).

An assault with intent to commit rape is a lesser degree of the crime of rape. Therefore, a conviction or acquittal of the former bars a subsequent prosecution of the latter based on the same act or transaction. *State v. Birkhead*, 256 N.C. 494, 124 S.E.2d 838 (1962).

**Same—Assault with Intent to Rape.** — Under a bill of indictment charging an assault with an intent to commit rape, the lesser offense of assault and battery may be found to have been committed, and in such instance a special issue may be submitted to the jury, if necessary, so that, in accordance with the jury's finding, the court may determine the grade of the punishment. *State v. Smith*, 157 N.C. 578, 72 S.E. 853 (1911).

Upon an indictment charging an assault with intent to commit rape, defendant may be convicted of an assault upon a female as though separately charged, and motion to dismiss under § 15-173 was properly refused where there was sufficient evidence to convict of an assault. *State v. Jones*, 222 N.C. 37, 21 S.E.2d 812 (1942).

Upon an indictment for an assault with intent to commit rape, even though the evidence is insufficient to support a verdict, motion for judgment of dismissal or nonsuit cannot be granted, as defendant may be convicted of an assault. *State v. Gay*, 224 N.C. 141, 29 S.E.2d 458 (1944).

Where in a prosecution under a bill of indictment charging assault with intent to commit rape the evidence discloses an assault but is insufficient to prove the intent necessary for a conviction of this offense, defendant is entitled to nonsuit on the offense charged, but is not entitled to his

discharge, since he may be convicted under the bill of indictment for assault upon a female as though this offense had been separately charged in the bill. *State v. Moore*, 227 N.C. 326, 42 S.E.2d 84 (1947).

In a prosecution of a defendant for assault with intent to commit rape, nonsuit of the felony does not entitle the defendant to his discharge, but the State may put defendant on trial under the same indictment for assault on a female, defendant being a male over the age of 18. *State v. Gammons*, 260 N.C. 753, 133 S.E.2d 649 (1963).

**Assault is not a less degree of the crime of larceny from the person**, and therefore, in a prosecution for larceny, the court is not required to submit the question of defendant's guilt of assault, even though there be evidence thereof. *State v. Acrey*, 262 N.C. 90, 136 S.E.2d 201 (1964).

**Duty of Judge.**—Upon the trial under an indictment for murder it is the duty of the trial judge, under supporting evidence, to declare and explain the law upon the less offense of manslaughter, with the burden of proof on defendant, and a statement of the contentions of the parties, etc., with a mere announcement of the principle is insufficient. *State v. Hardee*, 192 N.C. 533, 135 S.E. 345 (1926).

**Same—Prosecution for Robbery.** — The crime of robbery *ex vi termini* includes an assault on the person, and in a prosecution for robbery, the court must submit the question of defendant's guilt of assault in those instances where the evidence warrants such finding, even in the absence of a request, and even though the State contends solely for conviction of robbery and the defendant contends solely for complete acquittal. *State v. Hicks*, 241 N.C. 156, 84 S.E.2d 545 (1954).

If the State's evidence tends to show a completed robbery and there is no conflicting evidence relating to the elements of this offense, the court is not required to submit the question of defendant's guilt of assault, notwithstanding the jury's right to accept the State's evidence in part and reject it in part. *State v. Hicks*, 241 N.C. 156, 84 S.E.2d 545 (1954).

**Same—Failure to Charge upon Lesser Degree.**—The error of the judge in failing to charge on the supporting evidence, upon the lesser degree of the crime of rape, under a charge thereof in the indictment, is not cured by the verdict finding that the defendant was guilty of the greater degree of the crime charged in the indictment. *State v. Williams*, 185 N.C. 685, 116 S.E. 736 (1923).

Where the indictment is sufficient and the evidence is conflicting as to whether the defendant committed highway robbery or an assault with a deadly weapon, the jury may find for the lesser offense, and it is the duty of the trial judge to so instruct the jury, though a special request therefor has not been aptly tendered in writing. *State v. Holt*, 192 N.C. 490, 135 S.E. 324 (1926); *State v. Davis*, 242 N.C. 476, 87 S.E.2d 906 (1955).

Where the State's evidence in a prosecution under an indictment for rape, if believed to its fullest extent, established the crime of rape but the defendant testified the intercourse was with the girl's consent and the evidence was conflicting in other respects, it would have been error for the court not to have charged the jury on the lesser offenses. *State v. Green*, 246 N.C. 717, 100 S.E.2d 52 (1957).

It is a well recognized principle that where one is indicted for a crime, and under the same bill he may be convicted of a lesser degree of the same crime, and there is evidence tending to support the milder verdict, the prisoner is entitled to have this view presented to the jury under a correct charge, and an error in this respect is not cured by a verdict convicting the prisoner of a higher offense, for in such case it cannot be determined that the jury would not have convicted of the lesser crime if the view had been correctly presented by the judge, upon evidence.

**§ 15-170. Conviction for a less degree or an attempt.**—Upon the trial of any indictment the prisoner may be convicted of the crime charged therein or of a less degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a less degree of the same crime. (1891, c. 205, s. 2; Rev., s. 3269; C. S., s. 4640.)

**Application of Section.**—Where there are several counts in a bill, if the jury find the defendant guilty on one count and say nothing in their verdict concerning the other counts, it will be equivalent to a verdict of not guilty as to them. This principle should not be confused with the practice, authorized by this section, which permits the conviction of a "less degree of the same crime" when included in a single count. *State v. Hampton*, 210 N.C. 283, 186 S.E. 251 (1936).

The State's evidence tended to show that defendant broke and entered the dwelling house in question at night while same was occupied as a sleeping apartment, stole some money and ran when the female occupant discovered him and screamed. Defendant contended, upon supporting evidence, that at the time he was too drunk

*State v. Bass*, 249 N.C. 209, 105 S.E.2d 645 (1958).

**Where all the evidence points to a graver crime** and the jury's verdict is for an offense of a lesser degree, although illogical and incongruous, it will not be disturbed, since it is favorable to accused. *State v. Bentley*, 223 N.C. 563, 27 S.E.2d 738 (1943); *State v. Roy*, 233 N.C. 558, 64 S.E.2d 840 (1951).

**Effect of Simple Verdict of Guilty.**—While this section permits a verdict for an assault when it is embraced in the charge of a greater offense, as rape or other felony, a verdict simply of "guilty," and not specifying a lower offense, is a verdict of guilty of the offense charged in the indictment. *State v. Barnes*, 122 N.C. 1031, 29 S.E. 381 (1898); *State v. Lee*, 192 N.C. 225, 134 S.E. 458 (1926).

**Applied in** *State v. Johnson*, 227 N.C. 587, 42 S.E.2d 685 (1947); *State v. Lunsford*, 229 N.C. 229, 49 S.E.2d 410 (1948), treated in note under § 15-170; *State v. Matthews*, 231 N.C. 617, 58 S.E.2d 625 (1950).

**Cited in** *State v. Hairston*, 222 N.C. 455, 23 S.E.2d 885 (1943); *State v. Gregory*, 223 N.C. 415, 27 S.E.2d 140 (1943); *State v. Farrell*, 223 N.C. 804, 28 S.E.2d 560 (1944); *State v. Bell*, 228 N.C. 659, 46 S.E.2d 834 (1948), treated under § 15-170; *State v. Werst*, 232 N.C. 330, 59 S.E.2d 835 (1950); *State v. Weaver*, 264 N.C. 681, 142 S.E.2d 633 (1965).

to know where he was or what he was doing. The court instructed the jury that defendant might be convicted of burglary in the first degree, or of burglary in the second degree, if they found that the room was unoccupied, but if they found defendant was too drunk to form felonious intent they should return a verdict of not guilty. Held: The instruction required the jury to find the defendant guilty of burglary in the first degree or not guilty, since there was no evidence that the room was unoccupied, and defendant is entitled to a new trial for error of the court in failing to instruct that defendant might be found guilty of breaking and entering otherwise than burglariously, or of an attempt to commit the offense. *State v. Feyd*, 213 N.C. 617, 197 S.E. 171 (1938).

This section and § 15-169 are applicable

only when there is evidence tending to show that the defendant may be guilty of a lesser offense. *State v. Jones*, 249 N.C. 134, 105 S.E.2d 513 (1958), commented on in 41 N.C.L. Rev. 118 (1962).

**Crime of Accessory Included.** — The crime of accessory before the fact is included in the charge of the principal crime within the meaning of this section. *State v. Bryson*, 173 N.C. 803, 92 S.E. 698 (1917), discussing and, it seems, overruling *State v. Green*, 119 N.C. 899, 26 S.E. 112 (1896); *State v. Simons*, 179 N.C. 700, 103 S.E. 5 (1920).

The crime of accessory before the fact is included in the charge of the principal crime. Not so, accessory after the fact. *State v. Jones*, 254 N.C. 450, 119 S.E.2d 213 (1961), commented on in 41 N.C.L. Rev. 118 (1962).

**Joinder Mere Surplusage.** — Since this section was adopted the joinder in an indictment of a count for a lesser offense, or for an attempt to commit the same, is mere surplusage. *State v. Brown*, 113 N.C. 645, 18 S.E. 51 (1893).

**Sufficiency of Indictment.** — An indictment or information is insufficient to charge the accused with the commission of a minor offense or one of less degree unless, in charging the major offense, it necessarily includes within itself all of the essential elements of the minor offense, or sufficiently sets them forth by separate allegations in an added count; but when the indictment or information contains all the essential constituents of the minor offense, it sufficiently alleges that offense. *State v. Rorie*, 252 N.C. 579, 114 S.E.2d 233 (1960).

**Indictment for Attempt or Complete Offense.**—An attempt to commit a crime is an indictable offense, and on proper evidence, a conviction may be sustained on a bill of indictment making a specific and sufficient charge thereof, or one which charges a complete offense. *State v. Addor*, 183 N.C. 687, 110 S.E. 650 (1922); *State v. Parker*, 224 N.C. 524, 31 S.E.2d 531 (1944).

**Intent Alone Not Sufficient.**—The intent, though connected with preparations to commit a criminal offense, is not alone sufficient for a conviction of the attempt, unless connected with some overt act or acts toward the end in view that will, in the judgment of the one charged, and as matters appeared to him, result in the consummation of the contemplated purpose. *State v. Addor*, 183 N.C. 687, 110 S.E. 650 (1922).

**Defendant Entitled to Complete Charge.** — Under the provisions of this section

when the bill of indictment is sufficient with the supporting evidence upon the trial, the defendant may be convicted of the criminal offense charged or of a lesser degree thereof, and he is entitled to a charge from the court on all degrees of the crime thus encompassed by the indictment; and an error in failing to charge upon the lesser degrees of the crime is not cured by a verdict of conviction upon one of a greater degree. *State v. Robinson*, 188 N.C. 784, 125 S.E. 617 (1924). See also *State v. Keaton*, 206 N.C. 682, 175 S.E. 296 (1934).

When there is evidence tending to support a milder verdict than the one charged in the bill of indictment the defendant is entitled to have the different views presented to the jury under a proper charge, and an error in this respect is not cured by a verdict convicting him of the crime as charged in the bill of indictment, for in such case it cannot be known whether the jury would have convicted of a less degree if the different views, arising on the evidence, had been correctly presented by the trial court. *State v. Burnette*, 213 N.C. 153, 195 S.E. 356 (1938); *State v. DeGraffenreid*, 223 N.C. 461, 27 S.E.2d 130 (1943). See also *State v. Chambers*, 218 N.C. 442, 11 S.E.2d 280 (1940).

**And Conviction of Offense Charged Does Not Cure Error.**—A verdict of guilty of the offense charged in the indictment does not cure error of the court in failing to submit to the jury the question of defendant's guilt of less degrees of the crime. *State v. McNeill*, 229 N.C. 377, 49 S.E.2d 733 (1948); *State v. Davis*, 242 N.C. 476, 87 S.E.2d 906 (1955).

The general rule of practice is, that when it is permissible under the indictment to convict the defendant of "a less degree of the same crime," and there is evidence to support the milder verdict, the defendant is entitled to have the different views arising on the evidence presented to the jury under proper instructions, and an error in this respect is not cured by a verdict finding the defendant guilty of a higher degree of the same crime, for in such case, it cannot be known whether the jury would have convicted of the lesser degree if the different views, arising on the evidence, had been correctly presented in the court's charge. *State v. Childress*, 228 N.C. 208, 45 S.E.2d 42 (1947).

**Evidence Must Justify Conviction in Lesser Degree.**—The principle upon which a defendant may be convicted upon a less degree of the same crime charged in the bill of indictment applies only where there



is evidence of guilt of the less degree, and where burglary in the first and second degree is charged in the indictment, and the question as to guilt on the first count is withdrawn, and the evidence does not support the charge of second degree burglary, the defendant cannot be convicted of the lesser offense. *State v. Spain*, 201 N.C. 571, 160 S.E. 825 (1931).

The provisions of this section in regard to conviction of a less degree of the crime charged in a bill of indictment applies only where there is some evidence that a less degree of the crime had been committed, and where the State's uncontradicted evidence is to the effect that the crime of rape had been committed and the defendant relies solely upon an alibi, the refusal of the court to charge upon the lesser degrees of the crime or of an attempt is not error. *State v. Smith*, 201 N.C. 494, 160 S.E. 577 (1931).

Where all the evidence at the trial of a criminal action, if believed by the jury, tends to show that the crime charged in the indictment was committed as alleged therein, and there is no evidence tending to show the commission of a crime of less degree, it is not error for the court to fail to instruct the jury that they may acquit the defendant of the crime charged in the indictment and convict him of a crime of less degree. *State v. Cox*, 201 N.C. 357, 160 S.E. 358 (1931); *State v. Manning*, 221 N.C. 70, 18 S.E.2d 821 (1942); *State v. Sawyer*, 224 N.C. 61, 29 S.E.2d 34 (1944).

A defendant may be convicted of a less degree of the crime charged, or for which he is being tried, when there is evidence to support the milder verdict. *State v. Jordan*, 226 N.C. 155, 37 S.E.2d 111 (1946); *State v. Locklear*, 226 N.C. 410, 38 S.E.2d 162 (1946).

Where the evidence was sufficient to carry the case to the jury upon the charge of assault with intent to commit rape but the jury returned a verdict of guilty of an assault upon a female, the defendant being a male person over 18 years of age, such verdict was authorized by this section. *State v. Morgan*, 225 N.C. 549, 35 S.E.2d 621 (1945).

Where the evidence justified such action, the court properly charged the jury that defendant might be acquitted of felonious assault and battery with intent to kill charged in the indictment, and convicted of an assault of lower degree, namely, an assault with a deadly weapon. *State v. Anderson*, 230 N.C. 54, 51 S.E.2d 895 (1949).

**Uncontradicted Evidence Showing Defendant Guilty of More Serious Offense.—**

This and the preceding section were not intended to give to the jury the arbitrary right or discretion to convict a defendant of a lesser degree of the crime charged or of a less serious offense than that charged, if the uncontradicted evidence shows beyond a reasonable doubt that the defendant is guilty of the more serious offense charged in the bill of indictment. *State v. Brown*, 227 N.C. 383, 42 S.E.2d 402 (1947).

Where all the evidence tends to show that defendants feloniously took money from the person of prosecuting witness by violence and against his will through the use or threatened use of firearms, the court properly limits the jury to a verdict of guilty of robbery with firearms or a verdict of not guilty, there being no evidence warranting court in submitting the question of defendants' guilt of less degrees of the crime. *State v. Bell*, 228 N.C. 659, 46 S.E.2d 834 (1948).

**It would be without precedent to try defendant for one offense and to convict him of another and greater offense, even though the conviction be of a higher degree of the same offense for which he is being tried.** *State v. Jordan*, 226 N.C. 155, 37 S.E.2d 111 (1946).

**Error Not Prejudicial.—**Error committed by the court in submitting the question of defendant's guilt of a lesser degree of the offense charged cannot be prejudicial to defendant. *State v. Chase*, 231 N.C. 589, 58 S.E.2d 364 (1950).

**Instruction Limiting Verdict to Less Degree.—**Where, in an indictment charging an assault with intent to commit rape, the evidence shows an assault but fails to show an intent to commit rape, at all events and notwithstanding any resistance on the part of the intended victim, the court would err in refusing to give an instruction to limit the verdict to a less degree of the same crime. *State v. Jones*, 222 N.C. 37, 21 S.E.2d 812 (1942); *State v. Gay*, 224 N.C. 141, 29 S.E.2d 458 (1944).

**An indictment for rape includes an assault with intent to commit rape.** *State v. Green*, 246 N.C. 717, 100 S.E.2d 52 (1957); *State v. Birkhead*, 256 N.C. 494, 124 S.E.2d 838 (1962).

**An assault upon a woman is not a less degree of the crime of sodomy.** *State v. Jernigan*, 255 N.C. 732, 122 S.E.2d 711 (1961).

**Nor is assault a less degree of the crime of larceny from the person.** *State v. Acrey*, 262 N.C. 90, 136 S.E.2d 201 (1964).

**The misdemeanor of larceny is a less degree of the felony of larceny within the meaning of this section.** *State v. Cooper*,

256 N.C. 372, 124 S.E.2d 91 (1962); *State v. Summers*, 263 N.C. 517, 139 S.E.2d 627 (1965).

**In a prosecution for murder**, where the evidence raises a question as to whether or not the killing was intentional, this section requires that the question of the defendant's guilt of manslaughter be submitted to the jury with proper instructions. *State v. McNeill*, 229 N.C. 377, 49 S.E.2d 733 (1948).

Where there is evidence to support a charge of murder and evidence to support the defendant's plea of homicide by misadventure, and also evidence of manslaughter, this section requires that the "less degree of the same crime" be submitted to the jury with proper instructions. *State v. Childress*, 228 N.C. 208, 45 S.E.2d 42 (1947).

**Charge as to Assault Unnecessary Where Homicide Admitted.**—While under the provisions of this section the trial judge is required to charge upon evidence on the less degrees of the same crime concerning which the prisoner was being tried, it is not required that he charge upon the principles of an assault with a deadly weapon, where the prisoner is charged with murder, and the killing of the deceased by him has been admitted, and the judge has correctly charged upon the crime of manslaughter, the lowest degree of an unlawful killing of human being. *State v. Luterloh*, 188 N.C. 412, 124 S.E. 752 (1924).

**Instructions as to Second Degree Murder Where Evidence Shows First Degree.**—Where upon the trial for murder all the evidence tends to show that if the defendant is guilty, he is guilty of the crime of murder in the first degree, the failure of the trial court to charge upon the law of murder in the second degree or manslaughter is not error under this section. *State v. Ferrell*, 205 N.C. 640, 172 S.E. 186 (1934).

**Same—Assault.** — Where the evidence tended to show a simple assault by defendant on prosecuting witness and a later encounter between the parties in which defendant was armed with a deadly weapon, it was error, under this section, for the court to charge the jury that they could convict defendant of assault with the intent to kill, or assault with a deadly weapon or not guilty, and refuse to charge the jury that they might convict defendant of simple assault. *State v. Lee*, 206 N.C. 472, 174 S.E. 288 (1934).

**In prosecution for assault with a deadly weapon with intent to kill**, the court's instruction that the jury might find defendant guilty of a less degree of the crime,

including assault with a deadly weapon, if they so found beyond a reasonable doubt, is held without error. *State v. Elmore*, 212 N.C. 531, 193 S.E. 713 (1937).

Where a warrant charges a criminal assault with a deadly weapon, specifying the weapon, and the jury convicts of simple assault, a less degree of the same crime and the evidence warrants the verdict, the jury is empowered by this section to return such verdict. *State v. Gooding*, 251 N.C. 175, 110 S.E.2d 865 (1959).

Assault with a deadly weapon is an essential element of the felony created and defined by § 14-32, being an included "less degree of the same crime." *State v. Weaver*, 264 N.C. 681, 142 S.E.2d 633 (1965).

**In a prosecution for burglary in the first degree**, it is permissible for the jury to convict the defendant of an attempt to commit burglary in the second degree. *State v. Surles*, 230 N.C. 272, 52 S.E.2d 880 (1949).

**In Prosecution for Robbery.**—Testimony of defendants in a prosecution for robbery that they took the pistol from prosecuting witness to prevent him from harming them or some other person, requires the court to submit the question of each defendant's guilt of simple assault to the jury as a lesser offense included in the crime charged, since such verdict would be justified in the event the jury should find that defendants took the pistol without intent to steal it, but were not warranted in doing so on the principle of self-protection. *State v. Lunsford*, 229 N.C. 229, 49 S.E.2d 410 (1948).

An instruction by the trial judge that he was submitting the case to the jury "as to the charge of common-law robbery, that is the attempt to rob," was clearly understandable, though "attempt to commit robbery" was not defined in detail. *State v. McNeely*, 244 N.C. 737, 94 S.E.2d 853 (1956).

**In a prosecution for the crime against nature**, the accused may be convicted of the offense charged therein or the attempt to commit the offense. *State v. Harward*, 264 N.C. 746, 142 S.E.2d 691 (1965).

**Rape and carnally knowing a female** between the age of twelve and sixteen years are of such a nature as to come within the provisions of this section, permitting the jury to find the defendants guilty of the lesser crime, if they do not deem the evidence sufficient to warrant a conviction on the first. *State v. Hall*, 214 N.C. 639, 200 S.E. 375 (1939).

**A motion for judgment as of nonsuit** addressed to the entire bill is properly overruled if there is evidence sufficient to support a conviction of the crime charged

or of an included crime. *State v. Virgil*, 263 N.C. 73, 138 S.E.2d 777 (1964).

**Necessity for instructing jury as to included crime of lesser degree** than that charged arises when and only when there is evidence from which the jury could find that such included crime of lesser degree was committed. The presence of such evidence is the determinative factor. *State v. Jones*, 264 N.C. 134, 141 S.E.2d 27 (1965).

**An attempt to commit barratry** is an offense in this State and a defendant may be convicted of an attempt to commit the offense upon an indictment charging the common-law offense of barratry. *State v. Batson*, 220 N.C. 411, 17 S.E.2d 511, 139 A.L.R. 614 (1941).

**New Trial Must Be on Full Charge.** — Upon an appeal from a conviction for a lesser offense than that charged in the indictment, a new trial, if granted, must be upon the full charge in the bill. *State v. Matthews*, 142 N.C. 621, 55 S.E. 342 (1906).

§ 15-171: Repealed by Session Laws 1953, c. 100.

§ 15-172. **Verdict for murder in first or second degree.**—Nothing contained in the statute law dividing murder into degrees shall be construed to require any alteration or modification of the existing form of indictment for murder, but the jury before whom the offender is tried shall determine in their verdict whether the crime is murder in the first or second degree. (1893, c. 85, s. 3; Rev., s. 3271; C. S., s. 4642.)

**Object of Section.** — The object of this section is, of course, to place it beyond doubt in what degree of murder the prisoner was convicted. *State v. Wiggins*, 171 N.C. 813, 89 S.E. 58 (1916).

**Applies to All Indictments for Murder.**—This section applies to all indictments for murder, whether perpetrated by means of poisoning, lying in wait, imprisonment, starving, torture, or otherwise. *State v. Matthews*, 142 N.C. 621, 55 S.E. 342 (1906); *State v. Simmons*, 236 N.C. 340, 72 S.E.2d 743 (1952).

**Sufficiency of Indictment.**—For a brief history of this section in connection with sufficiency of indictment for first degree murder, see *State v. Kirksey*, 227 N.C. 445, 42 S.E.2d 613 (1947).

**Jury Must Determine Degree.** — For a conviction of murder in the first degree under this section and § 14-17, the jury must find specially under the evidence that this degree of crime has been committed by the defendant, and the verdict must be received in open court in the presence of the presiding judge under constitutional mandate, Const., Art. I, §§ 13, 17, which right may not be waived. *State v. Bazemore*, 193 N.C. 336, 137 S.E. 172 (1927).

**Applied** in *State v. Jones*, 227 N.C. 402, 42 S.E.2d 465 (1947); *State v. Jones*, 229 N.C. 276, 49 S.E.2d 463 (1948); *State v. Matthews*, 231 N.C. 617, 58 S.E.2d 625 (1950); *State v. Lambe*, 232 N.C. 570, 61 S.E.2d 608 (1950).

**Quoted** in *State v. Hairston*, 222 N.C. 455, 23 S.E.2d 885 (1943); *State v. Willis*, 255 N.C. 473, 121 S.E.2d 854 (1961).

**Cited** in *State v. Colson*, 194 N.C. 206, 139 S.E. 230 (1927); *State v. Ratcliff*, 199 N.C. 9, 153 S.E. 605 (1930); *State v. Palmer*, 212 N.C. 10, 192 S.E. 896 (1937); *State v. Hobbs*, 216 N.C. 14, 3 S.E.2d 431 (1939); *State v. Johnson*, 218 N.C. 604, 12 S.E.2d 278 (1940); *State v. Gregory*, 223 N.C. 415, 27 S.E.2d 140 (1943); *State v. Farrell*, 223 N.C. 804, 28 S.E.2d 560 (1944); *State v. Grimes*, 226 N.C. 523, 39 S.E.2d 394 (1946); *State v. Fowler*, 230 N.C. 470, 53 S.E.2d 853 (1949); *State v. Stone*, 245 N.C. 42, 95 S.E.2d 77 (1956).

By this section it is made the duty of the jury alone to determine in their verdict whether the crime is murder in the first or second degree. *State v. Gadberry*, 117 N.C. 811, 23 S.E. 477 (1895); *State v. Murphy*, 157 N.C. 614, 72 S.E. 1075 (1911); *State v. Bagley*, 158 N.C. 608, 73 S.E. 995 (1912). And the record must show that they have so done, in order that there may be a proper judgment. *State v. Lucas*, 124 N.C. 825, 32 S.E. 962 (1899); *State v. Truesdale*, 125 N.C. 696, 34 S.E. 646 (1899).

**Failure to Determine Degree.** — Where the degree of murder is not expressed in the verdict, the judge should tell the jury to reconsider their finding, for the purpose of specifying the crime, and upon response being made by them of murder in the first degree, the verdict is properly recorded accordingly. *State v. Bagley*, 158 N.C. 608, 73 S.E. 995 (1912).

**A defendant will not be permitted to plead guilty to murder in the first degree.** *State v. Blue*, 219 N.C. 612, 14 S.E.2d 635 (1941). For it is provided by this section that the "jury before whom the offender is tried shall determine in their verdict whether the crime is murder in the first or second degree." *State v. Simmons*, 236 N.C. 340, 72 S.E.2d 743 (1952).



**Judge May Exclude Second Degree in Charge.**—When the entire evidence shows, and no other reasonable inference can be fairly drawn therefrom, that the murder was committed either by lying in wait or in an attempt to perpetrate a felony, and the controverted question is the identity of prisoner as the murderer, the trial judge does not commit error in charging the jury to render a verdict of guilty of murder in the first degree or not guilty. *State v. Spevey*, 151 N.C. 676, 65 S.E. 995 (1909); *State v. Wiggins*, 171 N.C. 813, 89 S.E. 58 (1916).

In prosecution for murder, defendant's premeditation and deliberation are questions of fact, to be determined by jury under this section and § 14-17, and not questions of law for judge, and must be proved beyond a reasonable doubt. *State v. Newsome*, 195 N.C. 552, 143 S.E. 187 (1928).

**Verdict Construed According to Charge.**—The verdict must be construed according to the charge and the evidence and when these make it certain beyond question, the law has been complied with. *State v. Gilchrist*, 113 N.C. 673, 18 S.E. 319 (1893); *State v. Wiggins*, 171 N.C. 813, 89 S.E. 58 (1916).

**Mere Killing Presumes Second Degree Murder.**—Since the act of 1893, the killing being proved, and nothing else appearing, the law presumes malice, but not premeditation and deliberation, and the killing is murder in the second degree. *State v. Hicks*, 125 N.C. 636, 43 S.E. 247 (1899).

In all indictments for homicide, when the intentional killing is established or admitted, the law presumes malice from the use of a deadly weapon, and the defendant is guilty of murder (now in the second degree) unless he can satisfy the jury of the truth of facts which justify or excuse his act, or mitigate it to manslaughter. *State v. Lane*, 166 N.C. 333, 81 S.E. 620 (1914).

But a conviction of murder in the first degree may be had upon sufficient circumstantial evidence. *State v. Matthews*, 66 N.C. 106 (1872); *State v. Melton*, 187 N.C. 481, 122 S.E. 17 (1924); *State v. Bazemore*, 193 N.C. 336, 137 S.E. 172 (1927).

**When First Degree Presumed.**—A homicide committed in the perpetration of, or in an attempt to perpetrate, a robbery will be deemed murder in the first degree, the jury being governed by the evidence under proper instructions in finding that or a less offense. *State v. Lane*, 166 N.C. 333, 81 S.E. 620 (1914).

In an indictment for murder, when the homicide is shown or admitted to have been intentionally committed by lying in wait, poisoning, starvation, imprisonment,

or torture, the law raises the presumption of murder in the first degree, but none the less if the jury convict of a less offense, it is within their power so to do under the statute, and the prisoner has no cause to complain that he was not convicted of the higher offense. *State v. Matthews*, 142 N.C. 621, 55 S.E. 342 (1906).

A defendant will not be permitted to plead guilty to murder in the first degree under this section, and this rule applies to all indictments for murder, including murder perpetrated by means of poison, lying in wait, imprisonment, starving, torture or otherwise. *State v. Blue*, 219 N.C. 612, 14 S.E.2d 635 (1941).

**Evidence.**—Where all the evidence at a trial for murder tends to show murder in the first degree in that the murder was committed by poisoning, starvation, lying in wait, imprisonment, torture, or in the perpetration or attempt to perpetrate a felony, the trial court may instruct the jury that they may render only one of two verdicts, murder in the first degree, or not guilty. But where the evidence tends to show that the killing was with a deadly weapon, and the State in one phase of its case relies on premeditation and deliberation, the presumption is that the murder was in the second degree, with the burden of proving premeditation beyond a reasonable doubt on the State, in order to constitute it murder in the first degree, and under these circumstances it is error for the trial court to fail to charge the jury that they might find the prisoner guilty of murder in the second degree. *State v. Newsome*, 195 N.C. 552, 143 S.E. 187 (1928); *State v. Gause*, 227 N.C. 26, 40 S.E.2d 463 (1946).

**Instruction Held Error.**—An instruction to the effect that defendant's counsel had argued that the jury should return a verdict of guilty of murder in the first degree with recommendation for life imprisonment must be held for prejudicial error as tantamount to stating that counsel had tendered a plea of guilty to this offense. The error is not cured by the court's statement that if he was wrong he desired to be corrected, since a defendant will not be permitted to plead guilty to murder in the first degree, and tender of such plea would not be binding on him. *State v. Simmons*, 236 N.C. 340, 72 S.E.2d 743 (1952).

**Quoted in** *State v. Puckett*, 211 N.C. 66, 189 S.E. 183 (1937).

**Cited in** *State v. Gooding*, 196 N.C. 710, 146 S.E. 806 (1929); *State v. Thornton*, 211 N.C. 413, 190 S.E. 758 (1937); *State v. Goodwin*, 211 N.C. 419, 190 S.E. 761 (1937).

**§ 15-173. Demurrer to the evidence.**—When on the trial of any criminal action in the superior court or in any criminal court, the State has introduced its evidence and rested its case, the defendant may move to dismiss the action, or for judgment as in case of nonsuit. If the motion is allowed, judgment shall be entered accordingly; and such judgment shall have the force and effect of a verdict of “not guilty” as to such defendant. If the motion is refused and the defendant does not choose to introduce evidence, the case shall be submitted to the jury as in other cases, and the defendant may on appeal urge as ground for reversal, the trial court’s denial of his motion without the necessity of the defendant’s having taken exception to such denial.

If the defendant introduces evidence, he thereby waives any motion for dismissal or judgment as in case of nonsuit which he may have made prior to the introduction of his evidence and cannot urge such prior motion as ground for appeal. The defendant, however, may make such motion at the conclusion of all the evidence in the case, irrespective of whether or not he made a motion for dismissal or judgment as in case of nonsuit theretofore. If the motion is allowed, or shall be sustained on appeal, it shall in all cases have the force and effect of a verdict of “not guilty.” If the motion is refused, the defendant may on appeal, after the jury has rendered its verdict, urge as ground for reversal the trial court’s denial of his motion made at the close of all the evidence without the necessity of the defendant’s having taken exception to such denial. (1913, c. 73; Ex. Sess. 1913, c. 32; C. S., s. 4643; 1951, c. 1086, s. 1.)

**Cross References.** — As to demurrer to the evidence in civil cases, see § 1-183. As to motions in civil actions heard at criminal term, see § 7-72.

**Editor’s Note.**—For brief comment on 1951 amendment, see 29 N.C.L. Rev. 374.

**Compared with § 1-183.** — This section serves, and was intended to serve, the same purpose in criminal prosecutions as is accomplished by § 1-183, in civil actions. *State v. Fulcher*, 184 N.C. 663, 113 S.E. 769 (1922); *State v. Sigmon*, 190 N.C. 684, 130 S.E. 854 (1925); *State v. Norris*, 206 N.C. 191, 173 S.E. 14 (1934); *State v. Ormond*, 211 N.C. 437, 191 S.E. 22 (1937); *State v. Hill*, 225 N.C. 74, 33 S.E.2d 470 (1945); *State v. Bryant*, 235 N.C. 420, 70 S.E.2d 186 (1952); *State v. Sears*, 235 N.C. 623, 70 S.E.2d 907 (1952); *State v. Nall*, 239 N.C. 60, 79 S.E.2d 354 (1953).

**Means of Raising Objection That Evidence Insufficient for Jury.** — Objection that the evidence is not sufficient to carry the case to the jury must be raised by motion to nonsuit under this section, or by prayer for instructions to the jury, and may not be raised after verdict by motion for new trial or motion in arrest of judgment. *State v. Gaston*, 236 N.C. 499, 73 S.E.2d 311 (1952).

**On motion to nonsuit, the court is required merely to ascertain whether there is any competent evidence to sustain the allegations of the indictment.** *State v. Landin*, 209 N.C. 20, 182 S.E. 689 (1935). See also *State v. Lefevvers*, 216 N.C. 494, 5 S.E.2d 552 (1939); *State v. Alston*, 233 N.C. 341, 64 S.E.2d 3 (1951).

When the court is to rule upon a demurrer to the evidence in a criminal case, it is required merely to ascertain whether there is any competent evidence to sustain the allegations of the indictment, the evidence being construed in the light most favorable to the State. *State v. Murdock*, 225 N.C. 224, 34 S.E.2d 69 (1945).

A trial judge, in passing upon a motion for a judgment as of nonsuit, under the provisions of this section is not bound by the measure or quantum of proof by which the State must prove a defendant’s guilt before the jury can convict him. *State v. Davenport*, 227 N.C. 475, 42 S.E.2d 686 (1947).

A motion for judgment as of nonsuit should be denied if there is any evidence tending to prove the fact in issue, or which reasonably conduces the conclusion of guilt as a fairly logical and legitimate deduction, but evidence which merely raises a suspicion or conjecture of the fact of guilt is insufficient to be submitted to the jury. *State v. Stephenson*, 218 N.C. 258, 10 S.E.2d 819 (1940); *State v. Simmons*, 240 N.C. 780, 83 S.E.2d 904 (1954).

**On motion for nonsuit, it is a question of law for the court to determine, in the first instance, whether the evidence adduced, when considered in its light most favorable to the State, is of sufficient probative force to justify the jury in drawing the affirmative inference of guilt.** *State v. Needham*, 235 N.C. 555, 71 S.E.2d 29 (1952).

**On demurrer to the evidence and motion to nonsuit, the evidence must be considered in the light most favorable to the**

State, and contradictions and discrepancies in the testimony of the State's witnesses are to be resolved by the jury. *State v. Simpson*, 244 N.C. 325, 93 S.E.2d 425 (1956); *State v. Walker*, 251 N.C. 465, 112 S.E.2d 61 (1960).

The only question presented by a motion under this section for judgment as in case of nonsuit is whether the evidence is sufficient to require submission to the jury. *State v. Thompson*, 256 N.C. 593, 124 S.E.2d 728 (1962).

The court is required, in a motion for judgment of nonsuit, to consider all the State's voluminous and interlocking evidence in the light most favorable to it. *State v. Goldberg*, 261 N.C. 181, 134 S.E.2d 334 (1964).

**Whether Competent or Incompetent.**—Admitted evidence, whether competent or incompetent, must be considered in passing on defendant's motions for judgment as of nonsuit. *State v. Virgil*, 263 N.C. 73, 138 S.E.2d 777 (1964).

**Sufficiency of Evidence May Be Challenged if Motion Timely Made.**—Before the 1951 amendment to this section, if the defendant, on trial for murder, wished to challenge the sufficiency of the evidence to show premeditation and deliberation beyond a reasonable doubt, motion to nonsuit under this section, on the capital charge should be lodged at the close of the State's case, exception noted, if overruled, and the motion renewed at the close of all the evidence, and exception again noted, if overruled. *State v. Bittings*, 206 N.C. 798, 175 S.E. 299 (1934).

A motion for judgment of nonsuit, under this section as it stood before the 1951 amendment, must be made at the close of the State's evidence in order for a motion thereunder made at the close of all the evidence to be considered. *State v. Ormond*, 211 N.C. 437, 191 S.E. 22 (1937).

A motion for judgment as of nonsuit, in a criminal case under this section before the 1951 amendment must be made at the close of the State's evidence and, if denied, renewed at the close of all the evidence, otherwise the benefit of the exception to the court's refusal to grant the motion would be lost. *State v. Hill*, 225 N.C. 74, 33 S.E.2d 470 (1945).

To present the question of the sufficiency of the evidence upon appeal, under this section before the 1951 amendment, a motion to nonsuit had to be made at the close of the State's evidence, and exception noted upon its denial, and if defendant introduced evidence the motion must be renewed at the close of all the evidence, and

if again overruled another exception must be noted, in which event the assignment of error must be based upon the second exception. *State v. Perry*, 226 N.C. 530, 39 S.E.2d 460 (1946); *State v. Weaver*, 228 N.C. 39, 44 S.E.2d 360 (1947).

**Motion Must Be Renewed.**—A motion as of nonsuit upon the evidence will not be considered when it is not renewed after the conclusion of all the evidence as this section requires. *State v. Helms*, 181 N.C. 566, 107 S.E. 228 (1921). See also *State v. Kiziah*, 217 N.C. 399, 8 S.E.2d 474 (1940).

**Same—Waiver.**—Where the defendant in a criminal action moves for the dismissal or for judgment as of nonsuit after the close of the State's evidence, and thereafter elects to introduce his own evidence, his failure to renew his motion after the whole evidence has been introduced is a waiver of his right to insist upon his first motion, and it is not subject to review in the Supreme Court on appeal. *State v. Hayes*, 187 N.C. 490, 122 S.E. 13 (1924). See also *State v. Hargett*, 196 N.C. 692, 146 S.E. 801 (1929); *State v. Chapman*, 221 N.C. 157, 19 S.E.2d 250 (1942); *State v. Epps*, 223 N.C. 740, 28 S.E.2d 219 (1943); *State v. Jackson*, 226 N.C. 760, 40 S.E.2d 417 (1946).

The failure of a defendant to renew his motion for nonsuit at the close of all the evidence constitutes a waiver of his right to insist upon his first motion for nonsuit, and it is not subject to review in the Supreme Court. *State v. Howell*, 261 N.C. 657, 135 S.E.2d 625 (1964).

**Where the motion is not limited to a single count or any one degree of the crimes charged**, but is addressed to the entire bill or to both counts as a whole, it cannot be allowed in the face of testimony to support either count or any degree of either count. *State v. Marsh*, 234 N.C. 101, 66 S.E.2d 684 (1951).

**Only incriminating evidence need be considered upon defendant's motion as of nonsuit** under this section, and contradictions in the inculpatory testimony and equivocations of some of the State's witnesses, which affects the weight or credibility of the evidence but not its competency, need not be taken into account in determining whether there is any competent evidence to sustain the allegations of the indictment. *State v. Satterfield*, 207 N.C. 118, 176 S.E. 466 (1934). See also *State v. Moses*, 207 N.C. 139, 176 S.E. 267 (1934).

On a demurrer to the evidence only the State's evidence is to be considered, and the defendant's evidence is not to be taken into account, unless it tends to explain or make clear that offered by the State. State



v. Oldham, 224 N.C. 415, 30 S.E.2d 318 (1944).

In considering a motion under this section, the defendant's evidence, unless favorable to the State, is not to be taken into consideration, except when not in conflict with the State's evidence, it may be used to explain or make clear that which has been offered by the State. *State v. Bryant*, 235 N.C. 420, 70 S.E.2d 186 (1952); *State v. Sears*, 235 N.C. 623, 70 S.E.2d 907 (1952).

**When Motion Denied.**—A motion to dismiss or as of nonsuit upon the evidence in a criminal case, will be denied if the evidence is sufficient, considered in the light most favorable to the State, to prove guilt of the defendant beyond a reasonable doubt. *State v. Sigmon*, 190 N.C. 684, 130 S.E. 854 (1925).

Where evidence is conflicting in a criminal case and where, considering the evidence in the light most favorable to the State, the jury might find the defendant guilty, a motion as of nonsuit is properly denied. *State v. Carr*, 195 N.C. 129, 144 S.E. 698 (1928).

Where the evidence for the prosecution is sufficient to make out a case, nonsuit on the ground that the defendant's evidence tended to establish a defense is properly denied. *State v. Werst*, 232 N.C. 330, 59 S.E.2d 835 (1950).

A motion for judgment of nonsuit must be denied, if there be any substantial evidence—more than a scintilla—to prove the allegations of the indictment. *State v. Weinstein*, 224 N.C. 645, 31 S.E.2d 920 (1944).

A motion for judgment as of nonsuit addressed to the entire bill is properly overruled if there is evidence sufficient to support a conviction of the crime charged or of an included crime. *State v. Virgil*, 263 N.C. 73, 138 S.E.2d 777 (1964); *State v. Rowland*, 263 N.C. 353, 139 S.E.2d 661 (1965).

**Defendant's evidence relating to matters in defense should not be considered** on motion to nonsuit. *State v. Avery*, 236 N.C. 276, 72 S.E.2d 670 (1952); *State v. Moseley*, 251 N.C. 285, 111 S.E.2d 308 (1959).

**Consideration of Entire Evidence on Appeal.**—Where a defendant in a criminal action desires to except to the sufficiency of the evidence to convict him, his excepting, under this section, at the close of the State's evidence, and upon the overruling of his motion to nonsuit, excepting at the close of all the evidence, brings his exception to the Supreme Court on appeal upon the sufficiency of the entire evidence to convict, and is the proper procedure for

that purpose. *State v. Kelly*, 186 N.C. 365, 119 S.E. 755 (1923).

In *State v. Pasour*, 183 N.C. 793, 111 S.E. 799 (1922), the court said: "Both before and after he had introduced evidence, the defendant moved to dismiss the prosecution as in case of nonsuit, and duly excepted to the court's denial of his motion. The exceptions, therefore, require a consideration of the entire evidence."

An exception to a motion to dismiss in a criminal action taken after the close of the State's evidence, and renewed by defendant after the introduction of his own evidence, does not confine the appeal to the State's evidence alone, and a conviction will be sustained under the second exception if there is any sufficient evidence on the whole record of the defendant's guilt. *State v. Brinkley*, 183 N.C. 720, 110 S.E. 783 (1922).

Upon appeal from the denial of a motion as of nonsuit in a criminal action, review of the evidence is not confined to the State's evidence alone, but all the evidence in the State's favor, taken in the light most favorable to the State and giving it every reasonable intendment therefrom, will be considered, and where there is sufficient evidence of the defendant's guilt upon the whole record, the action of the trial judge in denying the motion of nonsuit will be upheld. *State v. Lawrence*, 196 N.C. 562, 146 S.E. 395 (1929).

A motion as of nonsuit in a criminal case at the close of the State's evidence, renewed after all the evidence has been introduced, does not confine its sufficiency to the time of the first motion, and will be denied if there is sufficient evidence in the State's behalf viewing all the evidence in its entirety. *State v. Earp*, 196 N.C. 164, 145 S.E. 23 (1928).

When upon the trial of a criminal action, the State produces its evidence and rests, and the defendant preserves his exception to the refusal of his motion for judgment as of nonsuit, and, after offering evidence and the case closed, defendant renews his motion for judgment as of nonsuit, the court must act, not only in the light of the evidence of the State, but of all the evidence; and, in such case, the defendant is entitled to the benefit only of his exception to the refusal of the latter motion. *State v. Norton*, 222 N.C. 418, 23 S.E.2d 301 (1942).

Where defendant offers evidence, the only question on appeal is whether the court erred in the denial of the motion made by defendant at the close of all the evidence. *State v. Leggett*, 255 N.C. 358, 121 S.E.2d 533 (1961).

**Same — Supreme Court Not to Weigh**

**Evidence.**—This section provides that if on the motion the judgment of nonsuit is allowed on appeal, “it shall, in all cases, have the force and effect of a verdict of not guilty.” This is not, therefore, the case of a new trial for some error of the judge, but is a verdict by the court of not guilty, which theretofore was without precedent. But the statute certainly did not intend that the Supreme Court should weigh the evidence and render a verdict. *State v. Cooke*, 176 N.C. 731, 97 S.E. 171 (1918).

**Where the evidence was substantially similar to that introduced at a former trial**, decision of the Supreme Court on the former appeal that evidence was sufficient to be submitted to the jury is *res judicata* on question of nonsuit or sufficiency of evidence. *State v. Stone*, 226 N.C. 97, 36 S.E.2d 704 (1946).

**Where the indictments contain two separate charges and the State takes a voluntary nonsuit upon the first count**, defendant's contention that the nonsuit established his innocence of acts charged under that count which also constituted essential elements of the offense charged in the second count, must be presented by a plea of former jeopardy or former acquittal, and not by motion for judgment as of nonsuit, under this section, and the failure of a plea of former jeopardy amounts to a waiver of his rights in the premises. *State v. Baldwin*, 226 N.C. 295, 37 S.E.2d 898 (1946).

**Where a complete defense is established by the State's case**, on a criminal indictment, the defendant should be allowed to avail himself of a motion for nonsuit under this section. *State v. Boyd*, 223 N.C. 79, 25 S.E.2d 456 (1943); *State v. Watts*, 224 N.C. 771, 32 S.E.2d 348 (1944); *State v. Jarrell*, 233 N.C. 741, 65 S.E.2d 304 (1951).

**Sufficiency of Evidence.**—Upon a motion for judgment as of nonsuit, the evidence must be considered in the light most favorable to the State and the court will not pass upon its weight or the credibility of the witnesses. *State v. Rountree*, 181 N.C. 535, 106 S.E. 669 (1921); *State v. Atlantic Ice, etc., Co.*, 210 N.C. 742, 188 S.E. 412 (1936); *State v. Johnson*, 226 N.C. 671, 40 S.E.2d 113 (1946). See *State v. Eubanks*, 209 N.C. 758, 184 S.E. 839 (1936). See also *State v. Mann*, 219 N.C. 212, 13 S.E.2d 247 (1941); *State v. Webb*, 233 N.C. 382, 64 S.E.2d 268 (1951); *State v. McLamb*, 235 N.C. 251, 69 S.E.2d 537 (1952); *State v. Robbins*, 243 N.C. 161, 90 S.E.2d 322 (1955); *State v. Edmundson*, 244 N.C. 693, 94 S.E.2d 844 (1956); *State v. Gay*, 251 N.C. 78, 110 S.E.2d 458 (1959).

A demurrer to the evidence presents only the question of the sufficiency of the

evidence to carry the case to the jury, the weight and credibility of the evidence being for the jury and not the court. *State v. Johnson*, 220 N.C. 773, 18 S.E.2d 358 (1942); *State v. Smith*, 221 N.C. 400, 20 S.E.2d 360 (1942).

Nonsuit may not be granted on the ground that the testimony of the State's witnesses was incredible and unworthy of belief, the credibility of the witnesses being for the jury and not the court. *State v. Bowman*, 232 N.C. 374, 61 S.E.2d 107 (1950); *State v. Wood*, 235 N.C. 636, 70 S.E.2d 665 (1952).

On appeal in criminal cases the Supreme Court cannot pass upon the weight of evidence but only whether there is sufficient evidence to support conviction. *State v. Shoup*, 226 N.C. 69, 36 S.E.2d 697 (1946).

The requirement that the evidence must be sufficient to convict beyond a reasonable doubt in criminal actions, is for the benefit of the defendant; and it requires the State to satisfy a jury to a moral certainty of the truth of the charge. *State v. Sigmon*, 190 N.C. 684, 130 S.E. 854 (1925).

On a motion for nonsuit in a criminal action, the evidence is to be taken in the light most favorable to the State, and it is entitled to the benefit of every reasonable intendment upon the evidence, and every reasonable inference to be drawn therefrom. *State v. Fleming*, 194 N.C. 42, 138 S.E. 342 (1927). See also *State v. Lawrence*, 196 N.C. 562, 146 S.E. 395 (1929); *State v. Durham*, 201 N.C. 724, 161 S.E. 398 (1931); *State v. Smoak*, 213 N.C. 79, 195 S.E. 72 (1938); *State v. Adams*, 213 N.C. 243, 195 S.E. 822 (1938); *State v. Hammonds*, 216 N.C. 67, 3 S.E.2d 439 (1939); *State v. Brown*, 218 N.C. 415, 11 S.E.2d 321 (1940); *State v. Block*, 245 N.C. 661, 97 S.E.2d 243 (1957); *State v. Avent*, 253 N.C. 580, 118 S.E.2d 47 (1961).

On a motion for judgment as of nonsuit in a criminal case the evidence must be considered in the light most favorable to the State. *State v. Herndon*, 223 N.C. 208, 25 S.E.2d 611 (1943). See *State v. McMahan*, 224 N.C. 476, 31 S.E.2d 357 (1944); *State v. Fulk*, 232 N.C. 118, 59 S.E.2d 617 (1950); *State v. Hendric*, 232 N.C. 447, 61 S.E.2d 349 (1950); *State v. Jarrell*, 233 N.C. 741, 65 S.E.2d 304 (1951); *State v. Holland*, 234 N.C. 354, 67 S.E.2d 272 (1951); *State v. Simmons*, 240 N.C. 780, 83 S.E.2d 904 (1954); *State v. Neal*, 248 N.C. 544, 103 S.E.2d 722 (1958); *State v. Glenn*, 251 N.C. 156, 110 S.E.2d 791 (1959); *State v. Downey*, 253 N.C. 348, 117 S.E.2d 39 (1960).

On a motion for judgment of nonsuit the evidence must be considered in the light most favorable for the State, and if

there be any competent evidence to support the charge contained in the bill of indictment the case is one for the jury. *State v. Scoggins*, 225 N.C. 71, 33 S.E.2d 473 (1945); *State v. Block*, 245 N.C. 661, 97 S.E.2d 243 (1957).

"In considering a motion to dismiss the action under the statute, we are merely to ascertain whether there is any evidence to sustain the indictment; and in deciding the question we must not forget that the State is entitled to the most favorable interpretation of the circumstances and all inferences that may fairly be drawn from them. *State v. Carlson*, 171 N.C. 818, 89 S.E. 30 (1916); *State v. Rountree*, 181 N.C. 535, 106 S.E. 669 (1921)." *State v. Carr*, 195 N.C. 129, 144 S.E. 698 (1928).

Upon motion to dismiss under this section, it is required that the court ascertain merely whether there is any sufficient evidence to sustain the allegations of the indictment and not whether it be true nor whether the jury should believe it. *State v. McLeod*, 196 N.C. 542, 146 S.E. 409 (1929).

Where the evidence for the State where the defendants are charged with fornication and adultery, shows no more than that the defendants had opportunities to commit the crime, on motion of the defendants, the action should be dismissed, and a verdict of not guilty, entered under this section. *State v. Woodell*, 211 N.C. 635, 191 S.E. 334 (1937).

Evidence that the defendants had assisted a prisoner to escape is held insufficient in *State v. Pace*, 192 N.C. 780, 136 S.E. 11 (1926) and the motion for judgment of nonsuit as provided in this section should have been granted.

The court said in *State v. Woodell*, 211 N.C. 635, 191 S.E. 334 (1937), citing *State v. Prince*, 182 N.C. 788, 108 S.E. 330 (1921), that when it is said that there is no evidence to go to the jury, it does not mean that there is literally and absolutely none, for as to this there could be no room for any controversy, but there is none which ought reasonably to satisfy the jury that the fact sought to be proved is established.

On a trial for the destruction of certain pages of a book in the office of the register of deeds, wherein the defendant's interest in so doing has been shown, it is required of the State to show that the offense was committed on the day the defendant had an opportunity to commit the offense, and a margin of several weeks, in which the offense might have been committed, during which time the books were open to the public generally, is insufficient evidence to

be submitted to the jury, and defendant's motion as of nonsuit should have been allowed. *State v. Swinson*, 196 N.C. 100, 144 S.E. 555 (1928).

Upon a motion as of nonsuit in a criminal action, made at the close of the State's evidence and renewed at the close of all of the evidence, all the evidence, whether offered by the State or elicited from defendant's witnesses, will be considered in the light most favorable to the State, and it is entitled to every reasonable inference thereon and every reasonable inference therefrom, and only evidence favorable to the State will be considered, the weight and credibility of the evidence being for the jury. *State v. Shipman*, 202 N.C. 518, 163 S.E. 657 (1932); *State v. Ammons*, 204 N.C. 753, 169 S.E. 631 (1933); *State v. Mann*, 219 N.C. 212, 13 S.E.2d 247, 132 A.L.R. 1309 (1941).

Upon motion as of nonsuit in a criminal action, under this section, the evidence is to be considered in the light most favorable to the State, and if there is any evidence tending to prove the fact of guilt or which reasonably conduces to its conclusion as a fairly logical and legitimate deduction, and not such as merely raises a suspicion or conjecture of guilt, it is for the jury to say whether they are convinced beyond a reasonable doubt of the fact of guilt. *State v. Marion*, 200 N.C. 715, 158 S.E. 406 (1931); *State v. Rhodes*, 252 N.C. 438, 113 S.E.2d 917 (1960); *State v. Rogers*, 252 N.C. 499, 114 S.E.2d 355 (1960).

A motion for nonsuit presents only the question of the sufficiency of the evidence to carry the case to the jury. *State v. Green*, 251 N.C. 40, 110 S.E.2d 609 (1959).

There must be legal evidence of the fact in issue and not merely such as raises a suspicion or conjecture in regard to it. *State v. Bass*, 253 N.C. 318, 116 S.E.2d 772 (1960).

Evidence which merely shows it possible for the fact in issue to be as alleged, or which raises a mere conjecture that it was so, is an insufficient foundation for a verdict and should not be left to a jury. *State v. Glenn*, 251 N.C. 156, 110 S.E.2d 791 (1959).

Upon a motion for judgment of nonsuit the evidence is to be considered in the light most favorable for the State, but evidence which merely suggests the possibility of guilt or which raises only a conjecture is insufficient to require submission to the jury. *State v. Guffey*, 252 N.C. 60, 112 S.E.2d 734 (1960).

On motion for nonsuit the State is entitled to have the evidence considered in its most favorable light. The reconcilia-



tion of any apparent discrepancy in the testimony, the weight of the evidence, and the credibility of the witnesses are all matters for the jury and not the court. *State v. Reeves*, 235 N.C. 427, 70 S.E.2d 9 (1952).

In ruling on a motion for nonsuit the court does not pass upon the credibility of the witnesses for the prosecution, or take into account any evidence contradicting them offered by the defense. The court merely considers the testimony favorable to the State, assumes it to be true, and determines its legal sufficiency to sustain the allegations of the indictment. Whether the testimony is true or false, and what it proves if it be true are matters for the jury. *State v. Wood*, 235 N.C. 636, 70 S.E.2d 665 (1952).

On a motion for judgment of nonsuit, the State is entitled to have the evidence considered in its most favorable light, and defendant's evidence, unless favorable to the State, is not to be considered, except, when not in conflict with the State's evidence, it may be used to explain or make clear the State's evidence. *State v. Roop*, 255 N.C. 607, 122 S.E.2d 363 (1961); *State v. Colson*, 262 N.C. 506, 138 S.E.2d 121 (1964).

**Same — Circumstantial Evidence.**—Upon demurrer to the evidence, when the State relies upon circumstantial evidence for a conviction of a criminal offense, the rule is that the facts established or advanced on the hearing must be of such nature and so connected or related as to point unerringly to the defendant's guilt and exclude any other reasonable hypothesis. *State v. Simmons*, 240 N.C. 780, 83 S.E.2d 904 (1954); *State v. Rhodes*, 252 N.C. 438, 113 S.E.2d 917 (1960); *State v. Rogers*, 252 N.C. 499, 114 S.E.2d 355 (1960).

When the motion for nonsuit calls into question the sufficiency of circumstantial evidence, the question for the court is whether a reasonable inference of defendant's guilt may be drawn from the circumstances. If so, it is for the jury to decide whether the facts, taken singly or in combination, satisfy them beyond a reasonable doubt that the defendant is actually guilty. *State v. Rowland*, 263 N.C. 353, 139 S.E.2d 661 (1965).

**Same — When State's Evidence Is Conflicting.**—When the substantive evidence offered by the State is conflicting—some tending to inculpate and some tending to exculpate the defendant—it is sufficient to repel a demurrer thereto. *State v. Tolbert*, 240 N.C. 445, 82 S.E.2d 201 (1954); *State*

*v. Gay*, 251 N.C. 78, 110 S.E.2d 458 (1959); *State v. Green*, 251 N.C. 40, 110 S.E.2d 609 (1959); *State v. Rogers*, 252 N.C. 499, 114 S.E.2d 355 (1960).

Discrepancies in the State's evidence will not justify the granting of a motion for nonsuit. *State v. Moseley*, 251 N.C. 285, 111 S.E.2d 308 (1959).

**Same — When Complete Defense Is Made Out by State's Evidence.**—It is axiomatic that when a complete defense is made out by the State's evidence, a defendant should be allowed to avail himself of such defense on a demurrer to the evidence under this section. This is true even when the exculpatory evidence is in the form of statements of defendant offered in evidence by the State. *State v. Tolbert*, 240 N.C. 445, 82 S.E.2d 201 (1954).

**Same — When State's Case Must Rest Entirely on Declarations of Defendant.**—When the State's case must rest entirely on declarations made by defendant, and there is no evidence contra which does more than suggest a possibility of guilt or raise a conjecture, demurrer thereto should be sustained. In such case, the declarations of the defendant are presented by the State as worthy of belief, and when they are wholly exculpatory, the defendant is entitled to his acquittal. *State v. Tolbert*, 240 N.C. 445, 82 S.E.2d 201 (1954).

**Same — Prosecution for Homicide.**—When an intentional killing with a deadly weapon has been established, the law implies malice, and the State cannot be nonsuited. *State v. Brooks*, 228 N.C. 68, 44 S.E.2d 482 (1947).

Defendant's motion to nonsuit is properly denied when the evidence tends to show an intentional killing with a deadly weapon, since the credibility and sufficiency of the defendant's evidence in mitigation or excuse is for the jury to consider and decide. *State v. Robinson*, 226 N.C. 95, 36 S.E.2d 655 (1946).

Where defendant, in a prosecution for murder, admitted that he intentionally and without provocation fired the gun which resulted in the death of deceased, a police officer, to prevent deceased from arresting him, and offered no excuse or explanation in mitigation for his act, except that he did not make up his mind and determine to kill deceased, there is evidence of premeditation and deliberation and evidence sufficient to sustain a verdict of murder in the first degree, and motion for nonsuit was properly overruled. *State v. Matheson*, 225 N.C. 109, 33 S.E.2d 590 (1945).

In a prosecution of two persons for murder, where the State's evidence tended

to show that deceased was standing near another person on a city sidewalk, when the first defendant called upon deceased to stop bothering his cousin and the deceased said he was not bothering anyone, whereupon the first defendant shot a pistol at deceased twice, and then the second defendant took the gun from the first defendant and shot at deceased twice, deceased falling to the ground at the second shot and dying on the way to the hospital, there being only one wound on deceased, a shot through the heart, there is ample evidence for the jury and the first defendant's motion for judgment as of nonsuit was properly denied. *State v. Williams*, 225 N.C. 182, 33 S.E.2d 880 (1945).

In a prosecution for felonious slaying evidence held sufficient to go to the jury. *State v. Stone*, 224 N.C. 848, 32 S.E.2d 651 (1945).

In a prosecution of defendant for murder of her husband, where the evidence for the State disclosed that deceased was shot twice, the first bullet being fired by codefendant, and the second bullet being fired by the defendant and that neither acted in concert, and the medical expert could not determine in the absence of autopsy which of the two wounds caused death, the defendant's demurrer to the evidence should have been sustained and the case dismissed. *State v. Simpson*, 244 N.C. 325, 93 S.E.2d 425 (1956).

**Same—Accident Rather than Homicide.**—Evidence tending only to show, upon a trial for wife murder, that the prisoner unintentionally in his sleep, as a result of a bad dream, inflicted upon his wife a wound too slight to have caused her death, except that from its neglect of treatment it may have been possible for blood poisoning to have set in therefrom that caused her death, is insufficient in law to sustain a conviction of manslaughter, and defendant's motion as of nonsuit, should have been sustained, under this section. *State v. Everett*, 194 N.C. 442, 140 S.E. 22 (1927). See also *State v. Tankersley*, 172 N.C. 955, 90 S.E. 781 (1916).

**Same—Murder in Perpetration of Robbery.**—Where two witnesses saw two of defendants enter a store, both witnesses being present, hold up the proprietor with pistols and shoot and kill him and flee, and two other witnesses saw both of these defendants run out of the store and enter and drive away in a car with third defendant, all four of these witnesses picking out defendants from a number of prisoners in a city jail about 30 days after the homicide and positively identifying them and their

car, without denial on the part of the prisoners, and other persons identifying same defendants as the perpetrators of another hold-up just before their arrest, there was sufficient identification and evidence of murder for the jury and motion for nonsuit was properly denied. *State v. Biggs*, 224 N.C. 722, 32 S.E.2d 352 (1944).

**Same—Rape.**—Evidence tending to show that the deceased was ravished by a person suffering from gonorrhea, and that she died from the assault and choking, with further evidence that the defendant had the disease and that his shoes fitted the tracks made at the time of the crime around the house of the deceased and at the place of the crime, is sufficient, taken with other evidence of guilt, to be submitted to the jury and to sustain their verdict thereon of murder in the first degree. *State v. McLeod*, 196 N.C. 542, 146 S.E. 409 (1929).

Positive testimony of rape by prosecutrix is sufficient to carry the case to the jury, even when her evidence is denied by defendant and nonsuit under this section was held properly denied. *State v. Vicks*, 223 N.C. 384, 26 S.E.2d 873 (1943).

Evidence of defendant's guilt of rape held sufficient to overrule his motion to nonsuit. *State v. Speller*, 230 N.C. 345, 53 S.E.2d 294 (1949).

**Same—Tending Only to Exculpate.**—Where the State's evidence and that of the defendant are substantially to the same effect, in an action for an assault, and tend only to exculpate the defendant, his motion as of nonsuit after all the evidence has been introduced, considering it as a whole, should be sustained. *State v. Fulcher*, 184 N.C. 663, 113 S.E. 769 (1922).

**Same—Father Shielding Child.**—The father may shield his child from assault of another to the extent necessary for the purpose without himself being guilty of an assault; and where he has done so, without the use of excessive force, as appears from all the evidence in the case, his motion as of nonsuit at the close of his evidence should be granted. *State v. Fulcher*, 184 N.C. 663, 113 S.E. 769 (1922).

**Same—Personal Presence of Defendant.**—In a criminal prosecution for felonious breaking and entering, larceny and receiving against several defendants, resulting in conviction of one of them of larceny only, a motion for nonsuit under this section, was properly denied, where the State's evidence tended to show that this defendant and one of the other defendants planned the theft and this defendant advised, aided and abetted his codefendant therein,



though not personally present when the theft occurred. *State v. King*, 222 N.C. 239, 22 S.E.2d 445 (1942).

**Same—Flight of Defendant from Scene of Crime.**—In a prosecution for breaking and entering an industrial plant with intent to steal, evidence tended to show that upon the arrival of police officers at the scene of a break-in in response to a telephone call, they saw the three defendants running up the street, that defendants got into a car and drove quickly away and were not stopped by the officers until after a ten mile chase, and that appealing defendant denied any knowledge of the break-in. It was held that the evidence was insufficient to be submitted to the jury, and judgment of nonsuit was allowed in the Supreme Court on appeal. *State v. Cranford*, 231 N.C. 211, 56 S.E.2d 423 (1949).

**Same — Recent Possession of Stolen Goods.**—Evidence that a cotton mill had been broken into and that goods taken therefrom had been found in defendant's possession within an hour or two thereafter, with further evidence of his unlawful possession, was sufficient for conviction, under the provisions of § 14-54, and defendant's demurrer to the State's evidence, or motion for dismissal, was properly overruled. *State v. Williams*, 187 N.C. 492, 122 S.E. 13 (1924).

Evidence from which the jury might infer that stolen goods were thereafter in the constructive possession of defendant will not justify an inference that at such time defendant knew the goods to have been stolen, and where the evidence is sufficient to support only the first inference the defendant's motion as of nonsuit should be allowed under this section. *State v. Anthony*, 206 N.C. 120, 173 S.E. 47 (1934).

In a criminal prosecution for larceny and receiving a bicycle, where the evidence tended to show that the bicycle was taken in the night from a parked truck, and was found near the same place about eight months thereafter in the possession of defendants, who made contradictory and false statements about how they came by it, there is not sufficient evidence to convict and a motion for nonsuit should have been granted. *State v. Cameron*, 223 N.C. 449, 27 S.E.2d 81 (1943).

**Same — Knowledge That Goods Were Stolen.** — In a prosecution for larceny and receiving, where the State's evidence tended to show that strangers to defendants stole a barrel of molasses, hid it among some trees in a pasture, offered to sell it to defendants, who agreed to buy at

a price considerably below the market and went in the nighttime to inspect and remove their purchase and were in the act of having it rolled out to their truck when the officer arrived, there is sufficient evidence to convict of an attempt to feloniously receive stolen property, knowing it to have been stolen, and motion of nonsuit was properly refused. *State v. Parker*, 224 N.C. 524, 31 S.E.2d 531 (1944).

Where three defendants bought goods, paying full value, about 2 A. M. from two strangers, who represented that they must dispose promptly of the merchandise from their business because both had been called to the armed forces, and one defendant promptly admitted all the facts to the officers while the other two first denied and then admitted the purchase, the State's witness who accompanied the thieves saying on cross-examination that the accused persons had no knowledge of the theft, the element of scienter is wanting and demurrer should have been sustained. *State v. Oxendine*, 223 N.C. 659, 27 S.E.2d 814 (1943).

**Same — Evidence Raising Suspicion Only.**—Evidence that does no more than raise a suspicion, somewhat strong perhaps, of a homicide and the defendant's guilt, is not enough on a prosecution for murder and demurrer to the evidence will be sustained. *State v. Carter*, 204 N.C. 304, 168 S.E. 204 (1933).

Upon a motion for nonsuit under this section, if there be any evidence tending to prove the fact in issue or which reasonably conduces to its conclusion as a fairly logical and legitimate deduction, the case should be submitted to the jury. But where there is merely a suspicion or conjecture in regard to the charge in the bill of indictment, the motion should be allowed. *State v. Boyd*, 223 N.C. 79, 25 S.E.2d 456 (1943); *State v. Kirkman*, 224 N.C. 778, 32 S.E.2d 328 (1944); *State v. Murphy*, 225 N.C. 115, 33 S.E.2d 588 (1945).

Where the evidence, taken in the light most favorable to the State, on motion by defendants for judgment as of nonsuit in a criminal prosecution, raises no more than a suspicion as to the guilt of defendants, the same is insufficient to support a verdict of guilty and the motion must be allowed. *State v. Hegler*, 225 N.C. 220, 34 S.E.2d 76 (1945).

On the trial of several defendants, upon an indictment for robbery, where the evidence against one of the defendants raises no more than a suspicion of his guilt, a motion to dismiss as to such defendant



should be allowed. *State v. Ham*, 224 N.C. 128, 29 S.E.2d 449 (1944).

**Same—Evidence of Accomplice.** — The evidence of accomplices is sufficient to carry the case to the jury and to justify a refusal of motion to nonsuit. *State v. Rising*, 223 N.C. 747, 28 S.E.2d 221 (1943).

**Same—Malicious Castration.** — The direct evidence of the guilt of one of the defendants in a prosecution for malicious castration, and the circumstantial evidence as to the other's participation and guilt is held sufficient to overrule their motions as of nonsuit. *State v. Ammons*, 204 N.C. 753, 169 S.E. 631 (1933).

**Same—Identity.** — In a prosecution for homicide the evidence of the defendant's identity as the perpetrator of the crime is sufficient to be submitted to the jury, the weight and credibility of the wife's identification of the defendant being for their determination, and defendant's motion as of nonsuit on the ground that her testimony was based upon imagination and auto-suggestion was properly refused. *State v. Fogleman*, 204 N.C. 401, 168 S.E. 536 (1933).

**Same—Conspiracy.** — Where the direct circumstantial evidence in this case tends to show that defendant had quarreled with deceased and had entered into a conspiracy to kill him, that deceased was murdered and that all the conspirators, including the appealing defendant, were present, aiding and abetting in the commission of the crime, the evidence is sufficient to be submitted to the jury and motion for nonsuit was properly overruled. *State v. Brown*, 204 N.C. 392, 168 S.E. 532 (1933).

For evidence held sufficient to overrule nonsuit as to each of several defendants in a prosecution for conspiracy, see *State v. Walker*, 251 N.C. 465, 112 S.E.2d 61 (1960).

**Same—Assault with Intent to Kill.** — In a prosecution, for a secret assault and battery with a deadly weapon with malice and intent to kill, evidence that there had been ill-feeling between the prosecuting witness and the defendant, that the prosecuting witness had seen and recognized the defendant standing outside a window in the witness's home, that the defendant appeared there suddenly at night and shot the prosecuting witness before he could do anything, and seriously wounded him, is sufficient to overrule defendant's motion as of nonsuit, and to show that the assault was done in a secret manner. *State v. McLamb*, 203 N.C. 442, 166 S.E. 507 (1932).

In a prosecution for assault with a deadly weapon with intent to kill, result-

ing in injury, it was held that there was ample evidence to sustain conviction and motion to dismiss under this section was properly denied. *State v. Cody*, 225 N.C. 28, 33 S.E.2d 71 (1945).

In a criminal prosecution for a felonious assault with intent to kill, where the State's evidence tended to show that defendant, while the prosecuting witness was having a row in her place of business with one of her servants, left the room and returned almost immediately with a shotgun and shot the prosecuting witness at close range, inflicting serious injury, there was sufficient evidence for the jury, and motion for judgment as of nonsuit was properly denied. *State v. Murdock*, 225 N.C. 224, 34 S.E.2d 69 (1945).

On trial upon an indictment for assault with a deadly weapon with intent to kill, motion for judgment of nonsuit was properly denied. *State v. Oxendine*, 224 N.C. 825, 32 S.E.2d 648 (1945).

**Same—Assault with Intent to Rape.** — Upon an indictment charging an assault with intent to commit rape, defendant may be convicted of an assault upon a female as though separately charged, and motion to dismiss under this section was properly refused where there was sufficient evidence to convict of an assault. *State v. Jones*, 222 N.C. 37, 21 S.E.2d 812 (1942); *State v. Gay*, 224 N.C. 141, 29 S.E.2d 458 (1944); *State v. Johnson*, 227 N.C. 587, 42 S.E.2d 685 (1947).

**Same — Operation of Prohibited Mechanical Device.** — Evidence tending to show that defendant was the owner of an automobile, and had been seen in same prior to its capture, and that when the automobile was subsequently captured it was being driven by others and had attached thereto a mechanical device for the emission of excessive smoke or gas, is insufficient to resist defendant's motion as of nonsuit under this section, in a prosecution under § 4506(b) [now G.S. § 20-136]. *State v. Yates*, 208 N.C. 194, 179 S.E. 756 (1935).

**Same—Gaming.** — In a criminal prosecution, under §§ 14-290, 14-291, and 14-291.1, the court erred in the refusal of defendants' motion of nonsuit. *State v. Heglar*, 225 N.C. 220, 34 S.E.2d 76 (1945).

**Same—Seduction.** — In a prosecution for seduction it was held that where facts and circumstances tended to support prosecutrix's statements a motion for nonsuit should be denied. *State v. Smith*, 223 N.C. 199, 25 S.E.2d 619 (1943).

**Same—Refusal to Support Child.** — In proceeding on indictment instituted more

than 13 years after the birth of an illegitimate child, charging defendant with willful neglect and refusal to support the child, whose paternity had been established in bastardy proceeding, the action was held barred under § 49-4 and motion for judgment of nonsuit was sustained. *State v. Dill*, 224 N.C. 57, 29 S.E.2d 145 (1944).

**Same — Unlawful Sale of Intoxicating Liquors.**—In a criminal prosecution for the unlawful possession of intoxicating liquors for the purpose of sale, where all the evidence tended to show that accused had concealed in the apartment occupied as a residence by himself and family, above a store operated by him, five pints of tax-paid liquor the seals on which had not been broken, and a sixth pint was found by officers at the back door of the store, where an unknown person was seen to "set something down," and some empty bottles, apparently wine bottles, were also found in the store, motion of defendant for judgment of nonsuit should have been sustained. *State v. Suddreth*, 223 N.C. 610, 27 S.E.2d 623 (1943).

In a prosecution for possession of intoxicating liquor for purpose of sale, where the evidence tended to show only that there was found in the yard of defendant's house an automobile containing 42 gallons of liquor, upon which no tax had been paid, defendant testifying that the car was not his, but was driven by a stranger, got out of order and defendant helped push it onto his premises, where it remained several days while he was away from home, and it was subsequently driven away by someone unknown to him, the refusal of defendant's motion for judgment of nonsuit was error. *State v. Kirkman*, 224 N.C. 778, 32 S.E.2d 328 (1944).

Where defendant at time of arrest said illicit whiskey belonged to him but at trial denied any knowledge of the liquor or its ownership, an issue of fact was presented for jury and motion to dismiss under this section was properly overruled. *State v. Stutts*, 225 N.C. 647, 35 S.E.2d 881 (1945).

Evidence tending to show that nontax-paid liquor was found near a hog pen which was maintained by the defendant, with further evidence that the hog pen was near a public alley as well as several public footpaths, is insufficient to be submitted to the jury on the question of defendant's constructive possession of the liquor, and motion for nonsuit should be sustained. *State v. Glenn*, 251 N.C. 156, 110 S.E.2d 791 (1959).

**Same—Operation of Motor Vehicle After License Suspended.**—In a criminal prosecution for the operation of a motor vehicle after the operator's license had been

revoked, where the State's evidence tended to show that defendant was tried and convicted in recorder's court, for operating a motor vehicle while under the influence of intoxicants, as James Stewart had his license revoked for one year, that the records show no license issued to James Stewart but show one to James Tyree Stewart of the same county as defendant, who admitted that his name was James Tyree Stewart when the highway patrolman went to take up his license, and that defendant was seen operating a motor vehicle upon the public highway within one year of such conviction and there had been no reinstatement of the revocation, there is sufficient evidence to sustain a conviction and motion for nonsuit was properly refused. *State v. Stewart*, 224 N.C. 528, 31 S.E.2d 534 (1944).

**Same—Violation of Hit and Run Drivers' Law.**—In a prosecution under § 20-166, the State introduced testimony of a statement by defendant that he had just driven on the road in question but that he had no knowledge or notice that he had struck any vehicle or injured any person during the trip. This statement was not contradicted or shown to be false by any other fact or circumstance in evidence. The statement was held binding upon the State, and defendant's motion for judgment of nonsuit was sustained in the Supreme Court for want of evidence that defendant knew he had been involved in an accident resulting in injury to a person. *State v. Ray*, 229 N.C. 40, 47 S.E.2d 494 (1943).

**Conflicting Evidence.**—Where the prosecutor's goods have been stolen two days before and they are found in the defendant's possession, with conflicting evidence upon the question of his having stolen them, the case can only be determined by the jury, and the defendant's motion under this section to dismiss must be denied. *State v. Jenkins*, 182 N.C. 818, 108 S.E. 767 (1921).

When the defendant is on trial under a criminal indictment for recklessly driving his car and colliding with another car in which deceased was riding, on a public highway, causing her death, and there is both direct and circumstantial evidence that the defendant was driving the car at the time, which his own testimony and evidence of his witnesses contradicts, his motion for judgment as in case of nonsuit, made at the close of the State's evidence and renewed after all the evidence, is prop-

erly denied. *State v. Leonard*, 195 N.C. 242, 141 S.E. 736 (1928).

**Testimony by State witness that defendant made a declaration of innocence does not entitle defendant to judgment as of nonsuit**, since such self-serving declaration does not rebut any proof by the State. *State v. Baldwin*, 226 N.C. 295, 37 S.E.2d 898 (1946).

**Variance.**—The defendant in a criminal action may raise the question of a variance between the indictment and the proof by a motion to dismiss the prosecution as in case of nonsuit. This is clearly set forth in *State v. Gibson*, 170 N.C. 697, 86 S.E. 774 (1915); *State v. Harbert*, 185 N.C. 760, 118 S.E. 6 (1923); *State v. Harris*, 195 N.C. 306, 141 S.E. 883 (1928); *State v. Grace*, 196 N.C. 280, 145 S.E. 399 (1928).

Where there is a fatal variance between the indictment and the proof, it is proper to sustain the demurrer to the evidence, or to dismiss the action as in case of nonsuit. *State v. Franklin*, 204 N.C. 157, 167 S.E. 569 (1933). See also *State v. Martin*, 199 N.C. 636, 155 S.E. 447 (1930).

Where it was alleged that defendant committed larceny of money and valuable papers, and the evidence tended to show, at most, an attempt to commit larceny of two suitcases or baggage, it was held that there was a fatal variance between the allegata and the probata, of which defect defendant could take advantage under his exception to the disallowance of his motion for judgment as of nonsuit. *State v. Nunley*, 224 N.C. 96, 29 S.E.2d 17 (1944).

The question of variance in a criminal action may be raised by motion for judgment as of nonsuit, or by demurrer to the evidence. *State v. Hicks*, 233 N.C. 511, 64 S.E.2d 871, cert. denied, *Hicks v. North Carolina*, 342 U.S. 831, 72 Sup. Ct. 56, 96 L. Ed. 629 (1951).

**Effect of Reversal of Judgment of Guilty.**—Under the provisions of this section the reversal of a judgment of guilty has the force and effect of a verdict of "not guilty." *State v. Corey*, 199 N.C. 209, 153 S.E. 923 (1930).

**Motion will not lie for failure of the State to offer evidence of a nonessential averment in the indictment**, when each essential element of the offense is supported by competent evidence. *State v. Atkinson*, 210 N.C. 661, 188 S.E. 73 (1936).

**Demurrer to the Evidence Properly Sustained.**—See *State v. Sims*, 208 N.C. 459, 181 S.E. 269 (1935), and *State v. White*, 208 N.C. 537, 181 S.E. 558 (1935), wherein defendant's indentity was not established; *State v. Landin*, 209 N.C. 20, 182 S.E. 689 (1935), wherein defendant's

negligence was held harmless; *State v. Creech*, 210 N.C. 700, 188 S.E. 316 (1936), wherein owner of car did not know driver was intoxicated; *State v. Harvey*, 228 N.C. 62, 44 S.E.2d 472 (1947), wherein the identity of the accused was not established; *State v. Coffey*, 228 N.C. 119, 44 S.E.2d 886 (1947), wherein it was held that taking all the State's evidence to be true did not exclude a reasonable hypothesis of defendant's innocence.

**Demurrer to the Evidence Properly Denied.**—See *State v. Webber*, 210 N.C. 137, 185 S.E. 659 (1936) (wherein evidence showed defendant was driving at fifty miles an hour before collision); *State v. Smith*, 211 N.C. 93, 189 S.E. 175 (1937) (wherein evidence showed felonious intent to commit rape); *State v. Vincent*, 222 N.C. 543, 23 S.E.2d 832 (1943) (evidence showing identity in rape); *State v. Reynolds*, 222 N.C. 40, 21 S.E.2d 813 (1942) (evidence showing felonious breaking and entry and showing identity); *State v. Dilliard*, 223 N.C. 446, 27 S.E.2d 85 (1943) (evidence showing guilt in abortion); *State v. Gordon*, 224 N.C. 304, 30 S.E.2d 43 (1944) (wherein evidence showed possession of liquor with intent to sell same unlawfully); *State v. King*, 224 N.C. 329, 30 S.E.2d 230 (1944) (wherein evidence sustained conviction of operating a lottery); *State v. Rivers*, 224 N.C. 419, 30 S.E.2d 322 (1944) (wherein evidence tended to show that prisoner killed deceased, while the two were quarreling over some trivial matters, defendant admitting the killing but alleging that he shot deceased to repel an assault); *State v. Peterson*, 225 N.C. 540, 35 S.E.2d 645 (1945) (wherein evidence offered held sufficient to repel the motion to dismiss under this section); *State v. Goins*, 233 N.C. 460, 64 S.E.2d 289 (1951) (prosecution for involuntary manslaughter); *State v. Hicks*, 233 N.C. 511, 64 S.E.2d 871, cert. denied, *Hicks v. North Carolina*, 342 U.S. 831, 72 Sup. Ct. 56, 96 L. Ed. 629 (1951) (prosecution for conspiracy); *State v. Fuqua*, 234 N.C. 168, 66 S.E.2d 667 (1951) (prosecution for illegal possession of intoxicating liquor); *State v. Holland*, 234 N.C. 354, 67 S.E.2d 272 (1951) (charge of felonious assault); *State v. Minton*, 234 N.C. 716, 68 S.E.2d 844 (1951) (prosecution for murder); *State v. McLamb*, 235 N.C. 251, 69 S.E.2d 537 (1952) (prosecution for possession of articles for use in manufacturing intoxicating liquor); *State v. Birchfield*, 235 N.C. 410, 70 S.E.2d 5 (1952) (prosecution for felonious assault with a deadly weapon with intent to kill); *State v. Bryant*, 235 N.C. 420, 70 S.E.2d 186 (1952) (prosecution for larceny of



chickens); *State v. Reeves*, 235 N.C. 427, 70 S.E.2d 9 (1952) (prosecution for rape); *State v. Murphy*, 235 N.C. 503, 70 S.E.2d 498 (1952) (prosecution for possession and sale of intoxicating liquor); *State v. Sears*, 235 N.C. 623, 70 S.E.2d 907 (1952) (prosecution for rape); *State v. Wood*, 235 N.C. 636, 70 S.E.2d 665 (1952) (prosecution for incest); *State v. Griffin*, 236 N.C. 219, 72 S.E.2d 427 (1952) (prosecution for second degree murder); *State v. Bryant*, 236 N.C. 745, 73 S.E.2d 791 (1953) (prosecution for breaking and entering with felonious intent and larceny); *State v. Myers*, 240 N.C. 462, 82 S.E.2d 213 (1954) (prosecution for receiving stolen goods).

**Denial of Motion for Nonsuit Held Error.** — See *State v. Holland*, 234 N.C. 354, 67 S.E.2d 272 (1951) (charge of robbery); *State v. Needham*, 235 N.C. 555, 71 S.E.2d 29 (1952) (prosecution for arson and murder).

**Effect of Judgment of Nonsuit on Subsequent Prosecution.** — The granting of a motion under this section for judgment of nonsuit, or verdict of not guilty in a criminal prosecution, charging defendant with willful neglect or refusal to support and maintain his illegitimate child, does not constitute an adjudication on the issue of paternity, and will not support a plea of former acquittal in a subsequent prosecution under § 49-2. *State v. Robinson*, 236 N.C. 408, 72 S.E.2d 857 (1952).

**Tantamount to Verdict of Not Guilty.** — Where defendant's motion to nonsuit was allowed in the Supreme Court, this ruling was tantamount to a verdict of not guilty. *State v. Smith*, 236 N.C. 748, 73 S.E.2d 901 (1953); *State v. Wooten*, 239 N.C. 117, 79 S.E.2d 254 (1953).

A judgment of nonsuit has the force and effect of a verdict of not guilty of the charge contained in the indictment. *State v. Stinson*, 263 N.C. 283, 139 S.E.2d 558 (1965).

**An instruction that the court grants a nonsuit on the offense charged in the indictment, followed by submission of the case on the question of defendants' guilt of a lesser degree of the offense charged, does not amount to a nonsuit on the indictment.** *State v. Matthews*, 231 N.C. 617, 58 S.E.2d 625 (1950).

**Applied in** *State v. Callett*, 211 N.C. 563, 191 S.E. 27 (1937); *State v. McDonald*, 211 N.C. 672, 191 S.E. 733 (1937); *State v. Brevington*, 212 N.C. 244, 193 S.E. 24 (1937); *State v. Delk*, 212 N.C. 631, 194 S.E. 94 (1937); *State v. Lockey*, 214 N.C. 525, 199 S.E. 715 (1938); *State v. Myers*, 214 N.C. 652, 200 S.E. 443 (1939); *State v. Goodman*, 220 N.C. 250, 17 S.E.2d 8

(1941); *State v. Johnson*, 220 N.C. 252, 17 S.E.2d 7 (1941); *State v. Todd*, 222 N.C. 346, 23 S.E.2d 47 (1942); *State v. Forte*, 222 N.C. 537, 23 S.E.2d 842 (1943); *State v. Edwards*, 224 N.C. 577, 31 S.E.2d 763 (1944); *State v. Peterson*, 226 N.C. 255, 37 S.E.2d 591 (1946); *State v. Malpass*, 226 N.C. 403, 38 S.E.2d 156 (1946); *State v. Little*, 228 N.C. 417, 45 S.E.2d 542 (1947); *State v. Minton*, 228 N.C. 518, 46 S.E.2d 296 (1948); *State v. Wooten*, 228 N.C. 628, 46 S.E.2d 868 (1948); as to motion for nonsuit sustained on appeal, in *State v. Palmer*, 230 N.C. 205, 52 S.E.2d 908 (1949); *State v. Baker*, 231 N.C. 136, 56 S.E.2d 424 (1949); *State v. Hill*, 233 N.C. 61, 62 S.E.2d 532 (1950); *State v. Ham*, 238 N.C. 94, 76 S.E.2d 346 (1953); *State v. Cranfield*, 238 N.C. 110, 76 S.E.2d 353 (1953); *State v. Bass*, 249 N.C. 209, 105 S.E.2d 645 (1958); *State v. Peeden*, 253 N.C. 795, 139 S.E. 601 (1927); *State v. Bailey*, 261 N.C. 783, 136 S.E.2d 37 (1964); *State v. Duncan*, 264 N.C. 123, 141 S.E.2d 23 (1965).

**Cited in** *State v. Eubanks*, 194 N.C. 319, 139 S.E. 451 (1927); *State v. Pridgen*, 194 N.C. 795, 139 S.E. 601 (1927); *State v. Mickle*, 194 N.C. 808, 140 S.E. 150 (1927); *State v. Dowell*, 195 N.C. 523, 143 S.E. 13 (1928); *State v. Golden*, 196 N.C. 246, 145 S.E. 236 (1928); *State v. Weston*, 197 N.C. 25, 147 S.E. 618 (1929); *State v. McKinnon*, 197 N.C. 576, 150 S.E. 25 (1929); *State v. Hickey*, 198 N.C. 45, 150 S.E. 615 (1929); *State v. Burleson*, 198 N.C. 61, 150 S.E. 628 (1929); *State v. Wrenn*, 198 N.C. 260, 151 S.E. 261 (1930); *State v. McLeod*, 198 N.C. 649, 152 S.E. 895 (1930); *State v. Spivey*, 198 N.C. 655, 153 S.E. 255 (1930); *State v. Ritter*, 199 N.C. 116, 154 S.E. 62 (1930); *State v. Beal*, 199 N.C. 278, 154 S.E. 604 (1930); *State v. Johnson*, 199 N.C. 429, 154 S.E. 730 (1930); *State v. Baker*, 199 N.C. 578, 155 S.E. 249 (1930); *State v. Sizemore*, 199 N.C. 687, 155 S.E. 724 (1930); *State v. Fletcher*, 199 N.C. 815, 155 S.E. 927 (1930); *State v. Wilson*, 205 N.C. 376, 171 S.E. 338 (1933); *State v. Davidson*, 205 N.C. 735, 172 S.E. 489 (1934); *State v. Mansfield*, 207 N.C. 233, 176 S.E. 761 (1934); *State v. Mozingo*, 207 N.C. 247, 176 S.E. 582 (1934); *State v. Newton*, 207 N.C. 323, 177 S.E. 184 (1934); *State v. Anderson*, 208 N.C. 771, 182 S.E. 643 (1935); *State v. Jones*, 209 N.C. 49, 182 S.E. 699 (1935); *State v. Camby*, 209 N.C. 50, 182 S.E. 715 (1935); *State v. Langley*, 209 N.C. 178, 183 S.E. 526 (1936); *State v. Hinson*, 209 N.C. 187, 183 S.E. 397 (1936); *State v. Lewis*, 209 N.C. 191, 183 S.E. 357 (1936); *State v. Oakley*, 210 N.C. 206, 186 S.E. 244 (1936); *State v. Gallman*, 210

N.C. 288, 186 S.E. 236 (1936); State v. Evans, 211 N.C. 458, 190 S.E. 724 (1937); State v. Caldwell, 212 N.C. 484, 193 S.E. 716 (1937); State v. Perry, 212 N.C. 533, 193 S.E. 727 (1937); State v. Hanford, 212 N.C. 746, 194 S.E. 481 (1938); State v. Libby, 213 N.C. 662, 197 S.E. 154 (1938); State v. Epps, 213 N.C. 709, 197 S.E. 580 (1938); State v. Stiers, 214 N.C. 126, 198 S.E. 601 (1938); State v. Bowser, 214 N.C. 249, 199 S.E. 31 (1938); State v. Hawkins, 214 N.C. 326, 199 S.E. 284 (1938); State v. Jones, 215 N.C. 660, 2 S.E.2d 867 (1939); State v. Hudson, 218 N.C. 219, 10 S.E.2d 730 (1940); State v. Wilson, 218 N.C. 769, 12 S.E.2d 654 (1941); State v. Hunt, 223 N.C. 173, 25 S.E.2d 598 (1943); State v. Graham, 224 N.C. 351, 30 S.E.2d 154 (1944); State v. Ogle, 224 N.C. 468, 31 S.E.2d 444 (1944); State v. Curling, 225

N.C. 769, 35 S.E.2d 179 (1945); State v. Williams, 229 N.C. 348, 49 S.E.2d 617 (1948); State v. Tilley, 231 N.C. 734, 58 S.E.2d 720 (1950); State v. Lamm, 232 N.C. 402, 61 S.E.2d 188 (1950); State v. Lambe, 232 N.C. 570, 61 S.E.2d 608 (1950); State v. Buchanan, 233 N.C. 477, 64 S.E.2d 549 (1951); State v. Wilson, 234 N.C. 552, 67 S.E.2d 748 (1951); State v. Dunn, 245 N.C. 102, 95 S.E.2d 274 (1956); State v. Revis, 253 N.C. 50, 116 S.E.2d 171 (1960); State v. Faust, 254 N.C. 101, 118 S.E.2d 769 (1961); State v. Aldridge, 254 N.C. 297, 118 S.E.2d 766 (1961); State v. Carter, 254 N.C. 475, 119 S.E.2d 461 (1961); State v. Gough, 257 N.C. 348, 126 S.E.2d 118 (1962); State v. Thompson, 257 N.C. 452, 126 S.E.2d 58 (1962); State v. Jones, 264 N.C. 134, 141 S.E.2d 27 (1965).

§ 15-174. **New trial to defendant.**—The courts may grant new trials in criminal cases when the defendant is found guilty, under the same rules and regulations as in civil cases. (1815, c. 895, P. R.; R. C., c. 35, s. 35; Code, s. 1202; Rev., s. 3272; C. S., s. 4644.)

**Cross Reference.** — As to new trial in civil cases, see § 1-207 and note thereto.

**Rule Similar at Common Law.** — Independent of this section, the rule of the common law was the same and in Wharton's Criminal Law, § 3391, it is laid down that "at common law the court trying the case, is the sole tribunal by whom a new trial can be granted, and its refusal so to do being matter of discretion is no ground for a writ of error." State v. Bennett, 93 N.C. 503 (1885).

**New Trial Not Granted after Acquittal.** —After a verdict of acquittal on a State prosecution, a new trial is not allowed by this section. State v. Taylor, 8 N.C. 462 (1821).

**Newly Discovered Evidence.**—A motion for new trial for newly discovered evidence will not be granted even in a civil case, where the evidence is merely cumulative or where it was withheld by the party moving. State v. Lilliston, 141 N.C. 857, 54 S.E. 427 (1906).

Motions for new trials for newly dis-

covered evidence cannot be entertained in the Supreme Court in criminal cases. State v. Lilliston, 141 N.C. 857, 54 S.E. 427 (1906).

A new trial will not be awarded in a criminal case in the Supreme Court for newly discovered evidence. State v. Morrow, 262 N.C. 592, 138 S.E.2d 245 (1964).

**Disqualification of Jurors and Newly Discovered Evidence.**—Where a judgment of the Supreme Court in a criminal case has been certified to the clerk of the superior court, the case is in the latter court for execution of the sentence, and a motion for a new trial may be there entertained for disqualification of jurors and for newly discovered evidence. State v. Casey, 201 N.C. 620, 161 S.E. 81 (1931).

**When Judgment Set Aside.** — A judgment regularly entered at one term of the court, cannot be set aside at a subsequent term, except in cases of surprise, mistake or excusable neglect. State v. Bennett, 93 N.C. 503 (1885).

§ 15-175. **Nol. pros. after two terms; when capias and subpœnas to issue.**—A nolle prosequi "with leave" shall be entered in all criminal actions in which the indictment has been pending for two terms of court and the defendant has not been apprehended and in which a nolle prosequi has not been entered, unless the judge for good cause shown shall order otherwise. The clerk of the superior court shall issue a capias for the arrest of any defendant named in any criminal action in which a nolle prosequi has been entered when he has reasonable ground for believing that such defendant may be arrested or upon the application of the solicitor of the district. When any defendant shall be arrested it shall be

the duty of the clerk to issue a subpoena for the witnesses for the State indorsed on the indictment. (1905, c. 360, ss. 1, 3, 4; Rev., s. 3273; C. S., s. 4645.)

**Cross Reference.**—As to clerk's record of nolle prosequi with leave cases, see § 2-42, paragraph 34.

**In General.**—A nolle prosequi is merely a declaration on the part of the solicitor that he will not then prosecute the suit further, and is not an acquittal, although its effect is to discharge the defendant without delay. *Wilkinson v. Wilkinson*, 159 N.C. 265, 74 S.E. 740 (1912).

**Effect of Nol. Pros.** — A nol. pros. in criminal proceedings does not amount to an acquittal, and the defendant may be arrested again upon the same bill and put to trial. *State v. Thornton*, 35 N.C. 256 (1852); *State v. Smith*, 129 N.C. 546, 40 S.E. 1 (1901); *State v. Faggart*, 170 N.C. 737, 87 S.E. 31 (1915).

**Discretion of Attorney General.** — The Attorney General has a discretionary power

to enter a nolle prosequi, and the court will not interfere, unless the power be oppressively used. *State v. Thompson*, 10 N.C. 613 (1825); *State v. Buchanan*, 23 N.C. 59 (1840).

**Permission of Court for New Capias.**—Where a nolle prosequi has been entered in a criminal case a capias will not issue as a matter of course upon the will of the prosecuting officer, but only upon permission of the court first obtained. *State v. Thornton*, 35 N.C. 256 (1852).

**Same—When Unnecessary.** — Where a "nolle prosequi with leave," is entered, it authorizes the clerk, at the request of the solicitor, to issue another capias. *State v. Smith*, 129 N.C. 546, 40 S.E. 1 (1901).

**Cited in** *State v. Furrage*, 250 N.C. 616, 109 S.E.2d 563 (1959).

**§ 15-176. Prisoner not to be tried in prison uniform.**—It shall be unlawful for any sheriff, jailer or other officer to require any person imprisoned in jail to appear in any court for trial dressed in the uniform or dress of a prisoner or convict, or in any uniform or apparel other than ordinary civilian's dress, or with shaven or clipped head. And no person charged with a criminal offense shall be tried in any court while dressed in the uniform or dress of a prisoner or convict, or in any uniform or apparel other than ordinary civilian's dress, or with head shaven or clipped by or under the direction and requirement of any sheriff, jailer or other officer, unless the head was shaven or clipped while such person was serving a term of imprisonment for the commission of a crime.

Any sheriff, jailer or other officer who violates the provisions of this section shall be guilty of a misdemeanor. (1915, c. 124; C. S., s. 4646.)

**§ 15-176.1. Solicitor may argue for death penalty.** — In the trial of capital cases, the solicitor or other counsel appearing for the State may argue to the jury that a sentence of death should be imposed and that the jury should not recommend life imprisonment. (1961, c. 890.)

**Arguments by Solicitor Held Proper in Light of This Section.**—See *State v. Christopher*, 258 N.C. 249, 128 S.E.2d 667 (1962).

## ARTICLE 18.

### *Appeal.*

**§ 15-177. Appeal from justice, trial de novo.**—The accused may appeal from the sentence of the justice to the superior court of the county. On such appeal being prayed, the justice shall recognize both the prosecutor and the accused, and all the material witnesses, to appear at the next term of the court, in such sums as he shall think proper; and he may require the accused to give sureties for his appearance as aforesaid. In all cases of appeal, the trial shall be anew, without prejudice from the former proceedings. (1868-9, c. 178, subc. 4, s. 11; 1879, c. 92, s. 10; Code, s. 900; Rev., s. 3274; C. S., s. 4647.)

**Cross References.**—As to appeal in civil cases, see § 1-299 and note 724 thereto. As to appeal by State, see § 15-179. As to recordari as substitute for appeal, see § 1-269.

**In General.**—These provisions have reference to criminal cases wherein the magistrate gives judgment against a party charged with a criminal offense, and im-



poses on him a punishment by fine or imprisonment. This is apparent from the nature of the matter, and as well from the language employed. They refer to the conviction and sentence of defendants. *State v. Lyon*, 93 N.C. 575 (1885).

**Right of Appeal Has Been Modified.**—The right of appeal to the superior court from conviction in a justice's court of a misdemeanor within the justice's jurisdiction, as provided by this section, has been modified by the statutes establishing and expanding the uniform system of recorders' courts, and under the general provisions of § 7-243, an appeal from a conviction of simple assault in a justice's court must first be taken to the recorder's court and not the superior court in the counties affected by the act. *State v. Baldwin*, 205 N.C. 174, 170 S.E. 645 (1933).

**Judgment Must Be Final in Nature.**—The appeal must be from a final judgment. *State v. Bailey*, 65 N.C. 426 (1871); *State v. Pollard*, 83 N.C. 598 (1880); *State v. Seaboard Air Line R.R.*, 169 N.C. 295, 84 S.E. 283 (1915).

**Appeal as Matter of Right.**—Under this section, a defendant found guilty of an offense of which the justice of the peace has final jurisdiction and an order is made without defendant's consent that judgment be suspended upon payment of costs, need not resort to the circuitous remedy of a recordari but is entitled to an appeal to the superior court as a matter of right. *State v. Griffin*, 117 N.C. 709, 23 S.E. 164 (1895).

**Right of Appeal Personal to Accused.**—The right of appeal provided for by this section is for the benefit only of the person accused; but so much of the judgment as is personal to the prosecutor and taxes him with the costs, may be appealed from. *State v. Powell*, 86 N.C. 640 (1882).

**Appeal under Section Presents Trial De Novo.**—Where the defendant after trial and conviction before a justice of the peace, moved in arrest of judgment, which motion was refused, and he appealed to the superior court, it was held, that the appeal brought up the whole case, and the defendant under this section was entitled to a trial de novo. *State v. Koonce*, 108 N.C. 752, 12 S.E. 1032 (1891). But where the defendant restricts himself by a plea of guilty then there can be no acts left open for consideration by a jury and the case on appeal does not concern the whole case. *State v. Warren*, 113 N.C. 683, 18 S.E. 498 (1893).

**§ 15-177.1. Appeal from justice of the peace or inferior court; trial anew or de novo.**—In all cases of appeal to the superior court in a criminal action from a justice of the peace or other inferior court, the defendant shall be

After an appeal from a recorder's court to a superior court has been effected and appeal bond given, the recorder's court has no further jurisdiction over the case, the procedure being the same as under this section, and defendant appellant may not thereafter withdraw the appeal by notice given in the recorder's court. *State v. Goff*, 205 N.C. 545, 172 S.E. 407 (1934).

**Bill of Indictment Unnecessary.**—Upon an appeal from an inferior court to the superior court from a conviction of a petty misdemeanor, the necessity of a bill of indictment in the latter court is dispensed with. *State v. Quick*, 72 N.C. 241 (1875); *State v. Jones*, 181 N.C. 543, 106 S.E. 827 (1921); but where the case is beyond the jurisdiction of the inferior court then an indictment is necessary. *State v. McAden*, 162 N.C. 575, 77 S.E. 298 (1913).

**Amendment to Complaint.**—Where the defendant has been separately tried before a justice of the peace for several indictable offenses, it is permissible for the superior court, on appeal, to allow an amendment to the complaint or warrant so as to make one complaint include the several offenses under different counts. *State v. Mills*, 181 N.C. 530, 106 S.E. 677 (1921).

**Excessive Punishment by Police Justice.**—A defendant is not entitled to a new trial because the punishment imposed by a police justice was excessive; the case should be remanded for resentencing in conformity to law. *State v. Black*, 150 N.C. 866, 64 S.E. 778 (1909).

**Due Process Where Justice Paid by Fee upon Conviction.**—Since a defendant in a criminal prosecution before a justice of the peace has a right to demand a jury trial as provided in § 15-157, and the right to appeal to the superior court and have the whole matter heard therein de novo, under this section, the fact that a justice's compensation is fixed upon a fee basis, which he will receive only in the event of conviction, does not result in depriving the defendant of trial under due process of law. *In re Steele*, 220 N.C. 685, 18 S.E.2d 132 (1942).

**Cited in** *State v. Boykin*, 211 N.C. 407, 191 S.E. 18 (1937); *State v. Crandall*, 225 N.C. 148, 33 S.E.2d 861 (1945); *State v. Meadows*, 234 N.C. 657, 68 S.E.2d 406 (1951); *State v. Norman*, 237 N.C. 205, 74 S.E.2d 602 (1953).

entitled to a trial anew and de novo by a jury, without prejudice from the former proceedings of the court below, irrespective of the plea entered or the judgment pronounced thereon. (1947, c. 482.)

**Appeal to Superior Court after Plea of Guilty in Inferior Court.**—Decisions prior to the enactment of this section enunciated the rule that where the accused in a criminal action pleads guilty to a misdemeanor in an inferior court having complete jurisdiction of the offense and appeals to the superior court from the judgment pronounced by the inferior court on his plea, the superior court sits as a mere court of review to determine the legality of the judgment of the inferior court. This section is aimed at the very foundation of this rule. Its plain purpose is to uproot that rule in its entirety. As a result of this statute, the rules of practice and procedure regulating the trial of criminal actions appealed to the superior court by defendants who pleaded guilty in inferior courts have been brought into complete harmony with those heretofore followed in the trial of the criminal actions appealed to the superior courts by defendants who pleaded not guilty in inferior courts. *State v. Meadows*, 234 N.C. 657, 68 S.E.2d 406 (1951).

**Sentence of Superior Court May Be Lighter or Heavier than That Imposed Below.**—Since the trial in the superior court is without regard to the proceedings in the inferior court, the judge of the superior court is necessarily required to enter his own independent judgment. Hence, his sentence may be lighter or heavier than that imposed by the inferior court, provided, of course, it does not exceed the limit of punishment which the inferior court could have imposed. *State v. Meadows*, 234 N.C. 657, 68 S.E.2d 406 (1951).

**Applied in** *State v. Williamson*, 238 N.C. 652, 78 S.E.2d 763 (1953).

**Stated in** *State v. Morgan*, 246 N.C. 596, 99 S.E.2d 764 (1957).

**Cited in** *State v. Hairston*, 247 N.C. 395, 100 S.E.2d 847 (1957); *State v. Gooding*, 251 N.C. 175, 110 S.E.2d 865 (1959); *State v. Hall*, 251 N.C. 211, 110 S.E.2d 868 (1959).

**§ 15-178. Justice to return papers and findings to superior court.**—In every case in which an appeal shall be prayed the justice shall forthwith transmit to the clerk of the superior court of the county all papers in the case, together with a copy of the verdict, if any, of his determination of the facts if there shall have been no trial by jury, and of the sentence, in which shall be set forth all the facts found by him, as well as his finding of those which were alleged in the complaint and which were found by him not to be proved. (1868-9, c. 178, subc. 4, s. 12; Code, s. 901; Rev., s. 3275; C. S., s. 4648.)

**Cited in** *State v. Goff*, 205 N.C. 545, 172 S.E. 407 (1934); *State v. Boykin*, 211 N.C. 407, 191 S.E. 18 (1937).

**§ 15-179. When State may appeal.**—An appeal to the Supreme Court or superior court may be taken by the State in the following cases, and no other. Where judgment has been given for the defendant—

- (1) Upon a special verdict.
- (2) Upon a demurrer.
- (3) Upon a motion to quash.
- (4) Upon arrest of judgment.
- (5) Upon a motion for a new trial on the ground of newly discovered evidence, but only on questions of law.
- (6) Upon declaring a statute unconstitutional. (Code, s. 1237; Rev., s. 3276; C. S., s. 4649; 1945, c. 701.)

**Cross Reference.**—As to distinction between general and special verdicts, see § 1-201 et seq.

**Editor's Note.** — For note on "Special Verdicts," see 13 N.C.L. Rev. 321. As to appeals by the State, see 23 N.C.L. Rev. 338.

For note on the right of the State to appeal in criminal cases, see 42 N.C.L. Rev. 887 (1964).

**Judgments Rendered in Superior Court.**—The right of the State to appeal upon a special verdict, a demurrer, a motion to quash, or a motion in arrest of judgment,



as provided by this section, applies only to judgments rendered in the superior court. *State v. Nichols*, 215 N.C. 80, 200 S.E. 926 (1939).

**Right Is Statutory.** — The right of the State to appeal is statutory, which right may not be enlarged by the superior court, and when the superior court remands a cause to the county court with provision that the State may appeal from any judgment thereafter rendered by the county court, the provision giving the State the right to appeal is void. *State v. Cox*, 216 N.C. 424, 5 S.E.2d 125 (1939). See *State v. Ferguson*, 243 N.C. 766, 92 S.E.2d 197 (1956).

**Bond Not Essential.**—A bond, in the case of an appeal on the part of the State, is not necessary, a recognizance being sufficient. *State v. M'Lelland*, 1 N.C. 632 (1804). As to necessity of bond on appeal by defendant, see *State v. Patrick*, 72 N.C. 217 (1875).

The word "demurrer" is used in this section in its usual and ordinary significance, as understood and defined in criminal pleading, and is not used in the sense of embracing "demurrer to evidence." *State v. Moody*, 150 N.C. 847, 64 S.E. 431 (1909).

**Upon a demurrer to an indictment** the State is allowed to appeal because it has the effect, in criminal cases, of opening the whole record to the court and, under it, the jurisdiction of the court may be challenged, as well as the sufficiency of the subject matter of the indictment itself. *State v. McDowell*, 84 N.C. 799 (1881); *State v. Moody*, 150 N.C. 847, 64 S.E. 431 (1909).

**No Right of Appeal from Procedural Error.**—The State has no right of appeal from the action of the trial judge in striking out a plea of guilty and entering erroneously a plea of not guilty and discharging the prisoner, upon a trial for an indictable offense. *State v. Branner*, 149 N.C. 559, 63 S.E. 169 (1908).

**Overruling Motion to Amend Record.**—No appeal lies by the State from an order overruling a motion to amend the record. *State v. Swepson*, 82 N.C. 541 (1880).

**Taxing Prosecutor with Costs.**—An appeal lies from the judgment of a justice of the peace taxing the prosecutor with costs, such taxing being in the nature of a civil judgment. *State v. Morgan*, 120 N.C. 564, 26 S.E. 634 (1897). See also note of *State v. Powell*, 86 N.C. 640 (1882), under § 15-177.

The refusal of the court to mark one as prosecutor of record is not one of the cases enumerated in this section in which the

State may appeal. *State v. Moore*, 84 N.C. 724 (1881).

**General Verdict of Not Guilty.** — In a criminal prosecution where there is a plea and general verdict of not guilty, the State has no right of appeal; such verdict ends the case. *State v. Savery*, 126 N.C. 1083, 36 S.E. 22 (1900) and cases cited; but under this section the State may appeal from a judgment for defendant on a special verdict. *State v. Lane*, 78 N.C. 547 (1878); *State v. Monger*, 107 N.C. 771, 12 S.E. 250 (1890); *State v. Winston*, 194 N.C. 243, 139 S.E. 240 (1927).

**Judgment Non Obstante Veredicto.** — Where there is a verdict convicting a defendant of a misdemeanor under the provisions of a statute prohibiting the drawing of a worthless check on a bank under certain conditions, and a judgment has been rendered in favor of the defendant non obstante veredicto, the State may appeal under the provisions of this section. *State v. Yarboro*, 194 N.C. 498, 140 S.E. 216 (1927).

**Order Sustaining Plea of Former Acquittal.**—The right of the State to appeal to the Supreme Court from adverse rulings of the superior court or to the superior court from adverse rulings of an inferior court is governed by this section. And the State has no right, under this section, to appeal from an order of the superior court sustaining a defendant's plea of former acquittal. *State v. Wilson*, 234 N.C. 552, 67 S.E.2d 748 (1951); *State v. Ferguson*, 243 N.C. 766, 92 S.E.2d 197 (1956).

The State has no right to appeal from a judgment allowing a plea of former jeopardy or acquittal. *State v. Reid*, 263 N.C. 825, 140 S.E.2d 547 (1965).

**Acquittal in Consequence of Erroneous Charge.**—When a defendant has once been tried and acquitted upon an indictment good in form, no appeal lies even though the acquittal is in consequence of the erroneous charge of the presiding judge. *State v. West*, 71 N.C. 263 (1874).

**Arrest of Judgment.**—In a prosecution for manslaughter, judgment was entered providing that prayer for judgment and sentence be continued and that the defendant be placed on probation for a period of five years, with further order that as a special condition of probation the defendant should pay a designated sum weekly into the office of the clerk for a period of five years for the use of the mother of the deceased. Upon defendant's petition filed after the death of the mother within the five-year period, the court adjudged that



the requirement for the payment of the sum had terminated and abated on her death. Held: The State may not appeal from the order, as the ruling is not equivalent to the allowance of a motion in arrest of judgment. *State v. McCollum*, 216 N.C. 737, 6 S.E.2d 503 (1940).

**Arrest of Judgment as to One of Two Defendants.**—Where in a prosecution for murder two defendants were convicted of manslaughter, the State under subdivision (4) of this section, has a right to appeal from an arrest of judgment as to one of them. *State v. Hall*, 183 N.C. 806, 112 S.E. 431 (1922).

**Remanding Case for Lighter Sentence.**—This section does not include a ruling of the superior court remanding a case for the imposition of a lesser sentence. *State v. Davidson*, 124 N.C. 839, 32 S.E. 957 (1899).

**If a warrant charges simple assault, the State has no right of appeal from a judgment of a justice of the peace acquitting the defendant, the justice having, in such cases, exclusive original jurisdiction.** *State v. Myrick*, 202 N.C. 688, 163 S.E. 803 (1932).

**The State may appeal from acquittal of defendant upon a special verdict, although the verdict is fatally defective in that it fails to find facts essential to an adjudication of defendant's guilt or innocence.** *State v. Gullledge*, 207 N.C. 374, 177 S.E. 128 (1934).

**Judgment Based on Unconstitutionality of Statute.**—Where the court enters judgment of not guilty, after a purported special verdict, on the conclusion that the statute on which the criminal prosecution was

based is unconstitutional, the State has no right of appeal under this section. *State v. Mitchell*, 225 N.C. 42, 33 S.E.2d 134 (1945).

**An appeal by the State from a judgment granting a new trial on the ground of newly discovered evidence falls within the expression "and no other," as used in this section, albeit the State seeks to present only a question of law.** *State v. Todd*, 224 N.C. 776, 32 S.E.2d 313 (1944).

**Applied in** *State v. Lancaster*, 169 N.C. 284, 84 S.E. 529 (1915) (order quashing bill of indictment); *State v. Parker*, 209 N.C. 32, 182 S.E. 723 (1935); *State v. Lovelace*, 228 N.C. 186, 45 S.E.2d 48 (1947); *State v. Glidden Co.*, 228 N.C. 664, 46 S.E.2d 860 (1948); *State v. Wilkes*, 233 N.C. 645, 65 S.E.2d 129 (1951) (order quashing indictment); *State v. Furnage*, 250 N.C. 616, 109 S.E.2d 563 (1959); *State v. Fesperman*, 264 N.C. 160, 141 S.E.2d 255 (1965); *State v. Hucks*, 264 N.C. 160, 141 S.E.2d 299 (1965); *State v. Teeter*, 264 N.C. 162, 141 S.E.2d 253 (1965); *State v. Stogner*, 264 N.C. 163, 141 S.E.2d 248 (1965); *State v. McCall*, 264 N.C. 165, 141 S.E.2d 250 (1965); *State v. Fesperman*, 264 N.C. 168, 141 S.E.2d 252 (1965).

**Stated in** *State v. Hinson*, 123 N.C. 765, 31 S.E. 854 (1898); *State v. Bowan*, 145 N.C. 452, 59 S.E. 74 (1907); *State v. Morris*, 208 N.C. 44, 179 S.E. 19 (1935).

**Cited in** *State v. Lawrence*, 213 N.C. 674, 197 S.E. 586, 116 A.L.R. 1366 (1938); *State v. Dixon*, 215 N.C. 161, 1 S.E.2d 521 (1939); *State v. Thomas*, 215 N.C. 181, 1 S.E.2d 533 (1939); *State v. Everett*, 244 N.C. 596, 94 S.E.2d 576 (1956); *State v. Hales*, 256 N.C. 27, 122 S.E.2d 768 (1961).

**§ 15-180. Appeal by defendant to Supreme Court.**—In all cases of conviction in the superior court for any criminal offense, the defendant shall have the right to appeal, on giving adequate security to abide the sentence, judgment or decree of the Supreme Court; and the appeal shall be perfected and the case for the Supreme Court settled, as provided in civil actions. (1818, c. 962, s. 4, P. R.; R. C., c. 4, s. 21; Code, s. 1234; Rev., s. 3277; C. S., s. 4650.)

**Cross References.**—As to perfection of appeal, see § 1-282 and note. As to essentials of transcript, see § 1-284 and note. As to undertaking on appeal in civil cases, see § 1-285 and note.

**Editor's Note.**—The manner of perfecting appeals in criminal cases is precisely the same as that in civil cases.

**Appeals in criminal cases are controlled by this section, and a defendant is entitled to appeal only from conviction in the superior court or some final judgment thereof, and an appeal from an order of the superior court remanding the case to the re-**

corder's court will be dismissed. *State v. Rooks*, 207 N.C. 275, 176 S.E. 752 (1934).

The statute does not provide for an appeal in criminal cases except from a final judgment. Hence, upon the indictment of members of the armed forces of the United States by State authorities, an appeal from an adverse ruling on objection to jurisdiction is premature. *State v. Inman*, 224 N.C. 531, 31 S.E.2d 641 (1944).

**Appeal or Substitute for Writ of Error.**—At common law there was no appeal from the decision of any of the courts, high or low, and these decisions could only

be reviewed by writ of error or writ of false judgment. In North Carolina appeals are used as a substitute for those writs. *State v. Bailey*, 65 N.C. 426 (1871); *State v. Webb*, 155 N.C. 426, 70 S.E. 1064 (1911).

**Bond Necessary.**—An appeal by the defendant to the Supreme Court will be dismissed where no appeal bond is filed, if there is no order allowing the appeal without such bond. *State v. Patrick*, 72 N.C. 217 (1875); *State v. Spurtin*, 80 N.C. 362 (1879). See § 15-181.

Where the defendant appealed in three cases without giving appeal bond, and it appeared that he had obtained leave to appeal without bond in one case only, it was held that the other cases would be dismissed. *State v. Hamby*, 126 N.C. 1066, 35 S.E. 614 (1900).

**Appeal "By Consent."**—Where an appeal without bond or affidavit was allowed by consent it was held not to be in compliance with the section. *State v. Kerns*, 90 N.C. 650 (1884).

**Appeal Lies Only from Final Judgment.**—The right to appeal is wholly statutory, and a defendant may appeal only from a conviction or from some judgment that is final in its nature. Thus an appeal from the denial of defendant's plea in abatement will be dismissed as being an appeal from an interlocutory judgment. *State v. Blades*, 209 N.C. 56, 182 S.E. 714 (1935).

Defendant was not convicted, but was acquitted. There was no judgment on conviction, or judgment prejudicial to the defendant in its nature final. The defendant therefore had no right to appeal to the Supreme Court and it is without jurisdiction to entertain the appeal, or to decide the questions presented by defendant's assignment of error. *State v. Hiatt*, 211 N.C. 116, 189 S.E. 124 (1937).

**Exercise of Right Should Not Prejudice Defendant.**—While the trial judge has the discretionary power to change the sentence during the term, where it appears of record that after prayer for judgment was continued, with defendant's consent, upon

specified terms, the court, upon learning of defendant's intention to appeal, struck that judgment out and imposed a jail sentence, the cause will be remanded for re-sentence, since defendant's exercise of his right to appeal under this section should not prejudice him in any manner. *State v. Patton*, 221 N.C. 117, 19 S.E.2d 142 (1942).

Where defendant could not meet the conditions upon which execution of the judgment was suspended if he exercised his right to appeal, under this section, the judgment on this count is erroneous, and the cause remanded for proper judgment thereon. *State v. Calcutt*, 219 N.C. 545, 15 S.E.2d 9 (1941).

**No Appeal from Order Overruling Motion to Quash Indictment.**—Where an appeal was sought from an order overruling a motion to quash an indictment, the appeal was dismissed, since the order was interlocutory and did not determine the cause. *State v. Baker*, 240 N.C. 140, 81 S.E.2d 199 (1954).

**It is the duty of appellant to see that the record is properly made up and transmitted.** *State v. Jenkins*, 234 N.C. 112, 66 S.E.2d 819 (1951); *State v. Roux*, 263 N.C. 149, 139 S.E.2d 189 (1964), commented on in 43 N.C.L. Rev. 596 (1965).

**Appeal Held Not Intelligently Waived by Indigent.**—See *State v. Roux*, 263 N.C. 149, 139 S.E.2d 189 (1964), commented on in 43 N.C.L. Rev. 596 (1965).

**Applied in** *State v. Cannon*, 227 N.C. 336, 42 S.E.2d 343 (1947); *State v. Gaskins*, 237 N.C. 438, 75 S.E.2d 107 (1953); *State v. Grundler*, 249 N.C. 399, 106 S.E.2d 488 (1959).

**Quoted in** *Veazey v. Durham*, 231 N.C. 357, 57 S.E.2d 377 (1950).

**Stated in** *State v. Cruse*, 238 N.C. 53, 76 S.E.2d 320 (1953).

**Cited in** *Current v. Church*, 207 N.C. 658, 178 S.E. 82 (1935); *State v. Stephenson*, 247 N.C. 232, 100 S.E.2d 326 (1957); *State v. Grundler*, 251 N.C. 177, 111 S.E.2d 1 (1959); *State v. Graves*, 251 N.C. 550, 112 S.E.2d 85 (1960).

**§ 15-180.1. Defendant may appeal from a suspended sentence.**—In all criminal cases in the inferior courts and in the superior courts of this State a defendant may appeal from a suspended sentence under the same rules as from any other judgment in a criminal case. The purpose of this section is to provide that by giving notice of appeal the defendant does not waive his acceptance of the terms of suspension of sentence. Instead, by giving notice of appeal, the defendant takes the position that there is error of law in his conviction. (1959, c. 1017.)

**Applied in** *State v. Green*, 251 N.C. 141, 110 S.E.2d 805 (1959); *State v. Foye*, 254 N.C. 704, 120 S.E.2d 169 (1961).

**Quoted in** *State v. Warren*, 252 N.C. 690, 114 S.E.2d 660 (1960).

**§ 15-181. Defendant may appeal without security for costs.**—In all cases of conviction in the superior courts, the defendant shall have the right to appeal without giving security for costs, upon filing an affidavit that he is wholly unable to give security for the costs, and is advised by counsel that he has reasonable cause for the appeal prayed, and that the application is in good faith. Where the judge of the superior court has made an order allowing the appellant to appeal as a pauper and the appeal has been filed in the Supreme Court, and an error or omission has been made in the affidavit or certificate of counsel, and the error is called to the attention of the court before the hearing of the argument of the case, the court shall permit an amended affidavit or certificate to be filed correcting the error or omission.

And where it shall appear to the presiding judge that a defendant who has been convicted of a capital felony, or having been tried upon a bill of indictment charging a capital felony, has been convicted of a less offense, and who has prayed an appeal to the Supreme Court from the sentence of death or other sentence pronounced against him upon such conviction, is unable to defray the cost of perfecting his appeal on account of his poverty, it shall be the duty of the county in which the alleged capital felony was committed, upon the order of such judge, to pay the necessary cost of obtaining a transcript of the proceedings had and the evidence offered on the trial from the court reporter for the use of the defendant and the necessary cost of preparing the requisite copies of the record and briefs which the defendant is required to file in the Supreme Court under the rules of said court.

Where it shall appear to the presiding judge that a defendant who has been convicted of a felony other than a capital felony, or having been tried upon a bill of indictment charging a noncapital felony, has been convicted of a lesser offense, and has prayed an appeal to the Supreme Court from sentence imposed, is unable to defray the cost of perfecting his appeal on account of his poverty, the judge may, in his discretion, and upon finding that the defendant is indigent, order the county in which the alleged crime was committed to pay the necessary cost of obtaining a transcript and proceedings for the use of the defendant, and the necessary cost of preparing the requisite copies of the record and briefs in the Supreme Court.

The judge may fix the reasonable value of the services rendered in furnishing such transcript and preparing such copies of the record and briefs, and said copies of the record and briefs shall be prepared in the manner prescribed by the rules of the Supreme Court in pauper appeals. Provided, that this paragraph shall apply only to those cases in which counsel has been assigned by the court. (1869-70, c. 196, s. 1; Code, s. 1235; Rev., s. 3278; C. S., s. 4651; 1933, c. 197; 1937, c. 330; 1951, c. 81; 1963, c. 954.)

**Cross Reference.** — As to appeals in forma pauperis in civil cases, see § 1-288 and note thereunder.

**Editor's Note.**—For comment on 1933 and 1937 amendments, see 15 N.C.L. Rev. 347.

The 1963 amendment inserted the third paragraph.

The requirements of this section are mandatory and jurisdictional, "and unless the statute is complied with, the appeal is not in this court, and we can take no cognizance of the case, except to dismiss it from our docket." *State v. Holland*, 211 N.C. 284, 189 S.E. 761 (1937), citing *Honeycutt v. Watkins*, 151 N.C. 652, 65 S.E. 762 (1909). See *State v. Robinson*, 214 N.C. 365, 199 S.E. 270 (1938). And

are not subject to indulgences or waiver. *State v. Holland*, 211 N.C. 284, 189 S.E. 761 (1937).

The requirements of the statute are mandatory, not directory, and unless complied with the appeal will be dismissed, not as a matter of discretion, but for want of jurisdiction. *State v. Mitchell*, 221 N.C. 460, 20 S.E.2d 292 (1942).

There is no authority for granting an appeal in forma pauperis without a proper supporting affidavit. *State v. Holland*, 211 N.C. 284, 189 S.E. 761 (1937).

**Essentials of the Affidavit Cannot Be Waived.**—The court has no authority to dispense with, or the prosecutor to waive the requirements of this section in respect to the affidavit which the defendant must



file. *State v. Moore*, 93 N.C. 500 (1885), decided prior to the 1951 amendment which provided for an amended affidavit to correct errors.

In *State v. Duncan*, 107 N.C. 818, 12 S.E. 382 (1890), it is said: "It is not a matter of discretion with the court, but it is the right of the State to have an appeal dismissed where there is a failure to comply with either of the three essential requirements" of this section. As to dismissal of appeal where no bond given or order allowing appeal without security, see *State v. Patrick*, 72 N.C. 217 (1875), decided prior to the 1951 amendment which provided for an amended affidavit to correct errors.

The affidavit is jurisdictional and may not be waived by the solicitor. *State v. Stafford*, 203 N.C. 601, 166 S.E. 734 (1932).

In order that the Supreme Court may have jurisdiction of an appeal in forma pauperis in a criminal action it is required that the application for leave to appeal be supported by an affidavit of the appellant showing that he is wholly unable to give the security required; that he is advised by counsel that he has reasonable cause for appeal, and that the application is made in good faith; and where any of these three statutory requirements have not been complied with the appeal will be dismissed. *State v. Marion*, 200 N.C. 715, 158 S.E. 406 (1931).

**Compared with Security in Civil Actions.**—The requirements of this section for prosecuting an appeal without making deposit or giving security for costs in a criminal prosecution, are different from those in a civil action, but the requirements of both statutes, are jurisdictional, and unless complied with in all respects, the appeal is not properly in this court. *Powell v. Moore*, 204 N.C. 654, 169 S.E. 281 (1933).

**Time of Perfecting Appeal.**—Appeals under this section can be allowed only during term of court and by the judge, *State v. Gatewood*, 125 N.C. 694, 34 S.E. 543 (1899), and if not perfected at this time the appeal is a nullity. *State v. Dixon*, 71 N.C. 204 (1874).

The affidavit is to be filed during the trial term or within ten days from the adjournment thereof. *State v. Mitchell*, 221

N.C. 460, 20 S.E.2d 292 (1942). See § 15-182.

**Proper Form Presumed.**—If an order is made allowing a defendant to appeal as a pauper, and the affidavit and certificate of counsel are not in the record sent to the Supreme Court, it will be presumed that they were in due form. *State v. Low*, 103 N.C. 350, 9 S.E. 411 (1889).

**Signature of Judge Essential.**—Where the order allowing an appeal in forma pauperis in criminal cases is not signed by the judge but by the clerk, the defect is jurisdictional, without power of the appellate court to allow amendment, and the appeal will be dismissed. *State v. Parish*, 151 N.C. 659, 65 S.E. 762 (1909).

**Name of Advising Counsel Need Not Appear.**—It is not necessary that an affidavit, filed under this section, should state the name of the counsel by whom the applicant is advised that he has reasonable grounds for appeal. *State v. Perkins*, 117 N.C. 697, 23 S.E. 274 (1895). But it has been suggested that it would be proper to state the name of such counsel. *State v. Divine*, 69 N.C. 390 (1873).

**Motion to Reinstate Appeal.**—Where one of the essential elements has been omitted from the affidavit, a motion to reinstate the appeal by offering to file a bond or make a deposit should be made when the motion to dismiss was before the court, and after the case has been regularly dismissed, it is too late. *State v. Martin*, 172 N.C. 977, 90 S.E. 502 (1916).

**Failure to Prosecute According to Rules of Court.**—See *State v. Holland*, 211 N.C. 284, 189 S.E. 761 (1937), where it was held that the affidavit not containing the assertion that "the application is in good faith," prevented the court having jurisdiction. See also *State v. Bynum*, 199 N.C. 376, 154 S.E. 918 (1930).

**Applied in** *State v. Starnes*, 92 N.C. 973 (1886); *State v. Wylde*, 110 N.C. 500, 15 S.E. 5 (1892); *State v. Atkinson*, 141 N.C. 734, 53 S.E. 228 (1906); *State v. Lampkin*, 227 N.C. 620, 44 S.E.2d 30 (1947); *State v. Parrott*, 228 N.C. 752, 46 S.E.2d 851 (1948).

**Cited in** *State v. Brumfield*, 198 N.C. 613, 152 S.E. 926 (1930); *State v. Brooks*, 224 N.C. 627, 31 S.E.2d 754 (1944); *State v. Grundler*, 251 N.C. 177, 111 S.E.2d 1 (1959).

**§ 15-182. Appeal granted; bail for appearance.**—The affidavit required in the preceding section [§ 15-181] may be filed at any time during the term or within ten days from the adjournment of the term either with the judge or the clerk, and it shall be the duty of the judge or the clerk on filing the affidavit to grant the appeal without security for costs, and for any bailable offense the judge

shall require the defendant to enter into recognizance in a reasonable sum to make his appearance at the first term of the superior court to be held in the county and to further answer the charge preferred. (1869-70, c. 196, s. 2; Code, s. 1236; Rev., s. 3279; C. S., s. 4652; 1929, c. 236, s. 1.)

**Correction of Errors Allowed by § 1-288 Applies to Civil Cases Only.**—The amendment to § 1-288 permitting correction of errors or omissions in the affidavit or certificate of counsel in pauper appeals at any time prior to the hearing of the argument of the case, applies only to appeals in civil actions and not to appeals in criminal prosecutions under this and the preceding section. *State v. Mitchell*, 221 N.C. 460, 20 S.E. 292 (1942).

**The affidavit for appeal in forma pauperis** must be made during the trial term or within ten days after the adjournment thereof in order for the Supreme Court to acquire jurisdiction of the appeal, but in a capital case the Supreme Court will nevertheless examine the exception or exceptions defendant undertakes to have considered on the appeal. *State v. Harrell*, 226 N.C. 743, 40 S.E.2d 205 (1946).

**§ 15-183. Bail pending appeal.**—When any person convicted of a misdemeanor or felony other than a capital offense and sentenced by the court, shall appeal, the court shall allow such person to give bail pending appeal; provided, in capital cases where the sentence is life imprisonment, the court, in its discretion, may allow such person to give bail pending appeal. (1850-1, c. 2; R. C., c. 35, s. 12; Code, s. 1181; Rev., s. 3280; C. S., s. 4653; 1953, c. 56.)

**Cross Reference.**—As to right of bail to surrender principal, see § 15-122.

**Editor's Note.**—For comment on the 1953 amendment, see 31 N.C.L. Rev. 405 (1953).

**In General.**—But for this section an accused would have no right to bail pending an appeal. *State v. Bradsher*, 189 N.C. 401, 127 S.E. 349 (1925).

**Amount of Bail.**—The question of the amount to be fixed for bond pending appeal is largely in the discretion of the court below. *State v. Parker*, 220 N.C. 416, 17 S.E.2d 475 (1941).

**Cited in** *In re Ferguson*, 235 N.C. 121, 68 S.E.2d 792 (1952).

**§ 15-183.1. When copy of evidence and charge furnished solicitor; taxed as costs.**—When an appeal in a criminal action is taken to the Supreme Court, and the defendant's attorney has ordered from the court reporter a transcript of the evidence and charge of the court or a transcript of the evidence alone, the court reporter shall furnish to the State solicitor a copy of the evidence of the case and the charge of the court. The county commissioners shall pay the court reporter for said transcript of the evidence and charge of the court, and the same shall be taxed as costs in said criminal action. Whenever there has been a change of venue, the bill for said copy of the evidence and charge of the court shall be paid by the county commissioners of the county in which the criminal action originated. (1951, c. 1080.)

**§ 15-184. Appeal not to vacate judgment; stay of execution.** — In criminal cases an appeal to the Supreme Court shall not have the effect of vacating the judgment appealed from, but upon perfecting the appeal as now required by law, either by giving bond or obtaining an order allowing appeal in forma pauperis, there shall be a stay of execution during the pendency of the appeal. The clerk of the superior court shall, after execution is stayed, as provided in this section, notify the Attorney General thereof. Said notice shall give the name of defendant, the crime of which he was convicted and if the statutory time for perfecting the appeal has been extended by agreement or otherwise, the time of such extension. If for any reason the defendant should wish to withdraw his appeal before the same is docketed in the Supreme Court, he may appear before the clerk of the superior court in which he was convicted and request in writing withdrawal of the appeal. The said clerk shall file and make an entry of such withdrawal and shall, if a sentence be called for, issue a commitment and

deliver same to the sheriff. The sentence shall begin as of the date of the issuance of the commitment. (1887, c. 191, s. 1; c. 192, s. 4; Rev., s. 3281; 1919, c. 5; C. S., s. 4654; 1955, c. 882.)

**The effect of an appeal is to stay all proceedings in the lower court pending the disposition of the appeal,** and where, after appeal bond has been given, the defendant makes motions before the superior court judge for a mistrial for prejudice of jurors and for a new trial for newly discovered evidence, the motions are coram non judge. *State v. Casey*, 201 N.C. 185, 159 S.E. 337 (1931).

**Clerk to Notify Attorney General of Appeal.**—Where an appeal is taken in a criminal case and the execution of the judgment stayed under this section, the clerk of the superior court is required to notify the Attorney General of the appeal, and, if the statutory time for perfecting the appeal is extended, he should notify him of such extension. *State v. Etheridge*, 207 N.C. 801, 178 S.E. 556 (1935); *State v. Watson*, 208 N.C. 70, 179 S.E. 455 (1935).

**Effect of Failure to Serve Statement of**

**Case within Time Fixed.**—Where defendants fail to make out and serve their statement of case on appeal within the time fixed, they lose their right to prosecute the appeal, and the motion of the Attorney General to docket and dismiss will be allowed, but where defendants have been convicted of a capital felony, this will be done only after an inspection of the record for errors appearing upon its face. *State v. Allen*, 208 N.C. 672, 182 S.E. 140 (1935). See also *State v. McLeod*, 209 N.C. 54, 182 S.E. 713 (1935).

**Conditions on Suspension of Execution.**—Suspension of execution of judgment must not be so conditioned as to interfere with right of appeal. *State v. Calcutt*, 219 N.C. 545, 15 S.E.2d 9 (1941).

**Applied in** *State v. Casey*, 201 N.C. 620, 161 S.E. 81 (1931); *Current v. Church*, 207 N.C. 658, 178 S.E. 82 (1935).

**§ 15-185. Judgment for fines docketed; lien and execution.**—When the sentence in whole or in part directs the payment of a fine, the judgment shall be docketed by the clerk and be a lien on the real estate of the defendant in the same manner as judgments in civil actions, and executions thereon shall only be stayed, upon an appeal taken, by security being given in like manner as is required in civil cases. Should the judgment be affirmed upon appeal to the Supreme Court, the clerk of the superior court, on receipt of the certificate from the Supreme Court, shall issue execution on such judgment. (1887, c. 191, s. 3; Rev., s. 3282; C. S., s. 4655.)

**Cross Reference.**—As to stay of execution upon appeal in civil cases, see § 1-289 et seq.

**Time Lien Attaches.**—A judgment for a fine, duly docketed, constitutes a lien on the real estate of defendant, under this

section, which lien attaches immediately upon the docketing of the judgment. *Osborne v. Board of Educ.*, 207 N.C. 503, 177 S.E. 642 (1935).

**Cited in** *Current v. Church*, 207 N.C. 658, 178 S.E. 82 (1935).

**§ 15-186. Procedure upon receipt of certificate of Supreme Court.**—The clerk of the superior court, in all cases where the judgment has been affirmed (except where the conviction is a capital felony), shall forthwith on receipt of the certificate of the opinion of the Supreme Court notify the sheriff, who shall proceed to execute the sentence which was appealed from. In criminal cases where the judgment is not affirmed the cases shall be placed upon the docket for trial at the first ensuing term of the court after the receipt of such certificate. (1887, c. 192, s. 3; Rev., s. 3283; C. S., s. 4656.)

**This section applies to final judgments where nothing further is required to be done by the court,** and not to orders suspending the execution of sentences on compliance with conditions imposed. *State v. Bowser*, 232 N.C. 414, 61 S.E.2d 98 (1950).

Where defendant appealed from a conviction of willful failure to support his illegitimate child notwithstanding the sus-

pension of execution of judgment, neither the clerk nor his deputy had authority to issue a mittimus upon receipt of certificate of opinion of the Supreme Court affirming the judgment. *State v. Bowser*, 232 N.C. 414, 61 S.E.2d 98 (1950).

**The fact that petitioner made a motion for a new trial on the ground of newly discovered evidence,** upon receipt by the superior court of certification of the Su-



preme Court's affirmance, did not suspend or otherwise affect the express provisions of this section or entitle petitioner to bond

as a matter of right pending hearing thereon. *State v. Renfrow*, 247 N.C. 55, 100 S.E.2d 315 (1957).

## ARTICLE 19.

### *Execution.*

**§ 15-187. Death by administration of lethal gas.**—Death by electrocution under sentence of law is hereby abolished and death by the administration of lethal gas substituted therefor. (1909, c. 443, s. 1; C. S., s. 4657; 1935, c. 294, s. 1.)

**Cross Reference.**—As to punishment for capital crimes committed before July 1, 1935, see § 15-191.

This section applies only to crimes committed after the effective date of the statute, July 1, 1935, and it will not support a sentence of death by lethal gas imposed for a capital crime committed prior to the effective date of the statute although defendant was tried and convicted after the effective date thereof. *State v. Hester*, 209 N.C. 99, 182 S.E. 738 (1935). See also *State v. Dingle*, 209 N.C. 293, 183 S.E. 376 (1936); *State v. McNeill*, 211 N.C. 286, 189 S.E. 872 (1937).

Cited in *State v. Jackson*, 199 N.C. 321, 154 S.E. 402 (1930); *State v. Ferrell*, 205 N.C. 640, 172 S.E. 186 (1934); *State v. Wall*, 205 N.C. 657, 172 S.E. 216 (1934); *State v. Baxter*, 208 N.C. 90, 179 S.E. 450 (1935); *State v. Horne*, 209 N.C. 725, 184 S.E. 470 (1936); *State v. Brice*, 214 N.C. 34, 197 S.E. 690 (1938); *State v. Hawley*, 229 N.C. 167, 48 S.E.2d 35 (1948); *State v. Gibson*, 229 N.C. 497, 50 S.E.2d 520 (1948); *State v. Hall*, 233 N.C. 310, 63 S.E.2d 636 (1951).

**§ 15-188. Manner and place of execution.**—The mode of executing a death sentence must in every case be by causing the convict or felon to inhale lethal gas of sufficient quantity to cause death, and the administration of such lethal gas must be continued until such convict or felon is dead; and when any person, convict or felon shall be sentenced by any court of the State having competent jurisdiction to be so executed, such punishment shall only be inflicted within a permanent death chamber which the superintendent of the State penitentiary is hereby authorized and directed to provide within the walls of the North Carolina penitentiary at Raleigh, North Carolina. The superintendent of the State penitentiary shall also cause to be provided, in conformity with this article and approved by the Governor and Council of State, the necessary appliances for the infliction of the punishment of death in accordance with the requirements of this article. (1909, c. 443, s. 2; C. S., s. 4658; 1935, c. 294, s. 2.)

Cited in *State v. Brooks*, 206 N.C. 113, 172 S.E. 879 (1934); *State v. Exum*, 213 N.C. 16, 195 S.E. 7 (1938); *State v. Montgomery*, 227 N.C. 100, 40 S.E.2d 614 (1946).

**§ 15-189. Sentence of death; prisoner taken to penitentiary.**—Upon the sentence of death being pronounced against any person in the State of North Carolina convicted of a crime punishable by death, it shall be the duty of the judge pronouncing such death sentence to make the same in writing, which shall be filed in the papers in the case against such convicted person. The clerk of the superior court in which such death sentence is pronounced shall prepare a certified copy of said judgment or sentence of death, including therewith a copy of any notice or entries of appeal made in such case; if no entries or notice of appeal have been made or given in such case, a statement to the effect shall be included in the certificate of the clerk; it shall also be the duty of the solicitor, assistant solicitor, or attorney prosecuting in behalf of the State in the absence of the solicitor, to prepare and sign a certificate stating in substance that he prosecuted said case in behalf of the State and that notice or entries of appeal have or have not been made or given in said case, and further that he has examined a copy

of said judgment or sentence of death certified by the clerk, including the copy of the notice or entries of appeal or statement to the effect that no appeal has been given, and to the best of his knowledge the same is correct; the certificate of said solicitor, or other prosecuting officer above named, shall be attached to the certified copy of said sentence of death, as prepared and certified by the clerk, and both certificates shall be transmitted by the clerk of the superior court in which said sentence of death is pronounced to the warden of the State penitentiary at Raleigh, North Carolina; at the same time and in the same manner, a duplicate original of said certificates shall be prepared by the clerk of the superior court and the solicitor, or other prosecuting officer above named, and the said duplicate original or said certificates shall be transmitted to the Attorney General of North Carolina. If notice of appeal is given or entries of appeal are made after the expiration of the term of superior court in which said sentence of death is pronounced, said certificates shall be prepared by the clerk of the superior court in which said sentence is pronounced and by the solicitor, or other prosecuting officer above named, prosecuting in behalf of the State, in the same manner and shall be transmitted as soon as possible to the warden of the State penitentiary at Raleigh, North Carolina, and to the Attorney General of North Carolina. The above certificates so prepared by the clerk of the superior court in which such sentence of death is pronounced and by the solicitor, or other prosecuting officer above named, shall be transmitted by the clerk of the superior court in which such sentence is pronounced to the warden of the State penitentiary at Raleigh, North Carolina, and to the Attorney General of North Carolina, not more than twenty (20) or less than ten (10) days before the time fixed in the judgment of the court for the execution of the sentence; and in all cases where there is no appeal, said sentence of death shall not be carried out by the warden of the State penitentiary or by any of his deputies or agents until said certificates so prepared and transmitted by the clerk of the superior court in which said sentence of death is pronounced, and by the solicitor, or the prosecuting officer above named, have been received in the office of the warden of the State penitentiary at Raleigh, North Carolina. In all cases where there is no appeal from the sentence of death and in all cases where the sentence is pronounced against a prisoner convicted of the crime of rape it shall be the duty of the sheriff, together with at least one deputy, to convey to the penitentiary, at Raleigh, North Carolina, such condemned felon or convict forthwith upon the adjournment of the court in which the felon was tried, and deliver the convict or felon to the warden of the penitentiary. (1909, c. 443, s. 3; C. S., s. 4659; 1951, c. 899, s. 1.)

**Judgment Must Be Written and Signed by Trial Judge.**—The entry of judgment of the court on the verdict of guilty of a capital felony by the clerk of the court on its minutes and signed by the judge is not a sufficient compliance with the provisions of this section, its mandatory provisions requiring the judgment to be written and signed by the judge, and where it appears of record that he has failed so to do the case will be remanded. *State v. Jackson*, 199 N.C. 321, 154 S.E. 402 (1930).

**Death Sentence without Reference to Crime.**—A judgment sentencing defendant to death for the commission of a capital felony, though making no reference to the trial or the crime of which the defendant was convicted, while not commended is held sufficient. *State v. Taylor*, 194 N.C. 738, 140 S.E. 728 (1927).

**Judgment Must Show Degree of Murder.**—Where the judgment upon a verdict of guilty of murder in the first degree states that the defendant had been convicted of murder, the cause must be remanded in order that it appear on the face of the judgment that the conviction was for murder in the first degree, since the judgment alone is certified to the warden of the State penitentiary. *State v. Montgomery*, 227 N.C. 100, 40 S.E.2d 614 (1946).

Where in a prosecution for murder the jury returns a verdict of guilty of murder in the first degree, the judgment of the court, which alone is certified to the warden of the State prison, under this section and §§ 15-188, 15-190, must recite that the defendant had been convicted of murder in the first degree, and where it recites

that the prisoner had been convicted of murder, and sentences the prisoner to death by electrocution, the case will be remanded. *State v. Langley*, 204 N.C. 687, 169 S.E. 705 (1933).

**When No Reference to Trial or Crime Is Made.** — A judgment, while somewhat

informal, because it made no reference to the trial or the crime of which the prisoner was convicted, is, nevertheless, sufficient to meet the requirements of this section. *State v. Edney*, 202 N.C. 706, 164 S.E. 23 (1932).

**§ 15-190. A guard or guards or other person to be named and designated by the warden to execute sentence.**—Some guards or guards or other reliable person or persons to be named and designated by the warden from time to time shall cause the person, convict or felon against whom the death sentence has been so pronounced to be asphyxiated as provided by this article and all amendments thereto. The asphyxiation shall be under the general supervision and control of the warden of the penitentiary, who shall from time to time, in writing, name and designate the guard or guards or other reliable person or persons who shall cause the person, convict or felon against whom the death sentence has been pronounced to be asphyxiated as provided by this article and all amendments thereto. At such execution there shall be present the warden or deputy warden or some person designated by the warden in his stead; the surgeon or physician of the penitentiary and six respectable citizens, the counsel and any relatives of such person, convict or felon and a minister or ministers of the gospel may be present if they so desire, and the board of directors of the penitentiary may provide for and pay the fee for each execution not to exceed thirty-five dollars (\$35.00). (1909, c. 443, s. 4; C. S., s. 4660; 1925, c. 123; 1935, c. 294, s. 3.)

**Cited in** *State v. Montgomery*, 227 N.C. 100, 40 S.E.2d 614 (1946).

**§ 15-191. Pending sentences unaffected.**—Nothing in §§ 15-187, 15-188, and 15-190 shall be construed to alter in any manner the execution of the sentence of death imposed on account of any crime or crimes committed before July 1, 1935. (1935, c. 294, s. 4.)

**Editor's Note.** — The act from which electrocution to the administration of this section was codified changed the lethal gas. mode of executing a death sentence from

**§ 15-192. Certificate filed with clerk.**—The warden, together with the surgeon or physician of the penitentiary, shall certify the fact of the execution of the condemned person, convict or felon to the clerk of the superior court in which such sentence was pronounced, and the clerk shall file such certificate with the papers of the case and enter the same upon the records thereof. (1909, c. 443, s. 5; C. S., s. 4661.)

**§ 15-193. Notice of reprieve or new trial.**—Should the condemned person, convict or felon be granted a reprieve by the Governor or obtain a writ of error, or a new trial be granted by the Supreme Court of the State of North Carolina, or should the execution of the sentence be stayed by any competent judicial tribunal or proceeding, notice of such reprieve, new trial, appeal, writ of error or stay of execution shall be served upon the warden or deputy warden of the penitentiary by the sheriff of Wake County, in case such condemned person is confined in the penitentiary, or upon any sheriff having the custody of any such condemned person, also upon the condemned person himself. (1909, c. 443, s. 6; C. S., s. 4662.)

**§ 15-194. Judgment sustained on appeal, reprieve, time for execution.**—In case of an appeal, should the Supreme Court find no error in the trial, or should the stay of execution granted by any competent judicial tribunal or proceeding, or reprieve by the Governor, have expired or terminated, or in case the certificates of the clerk of the superior court and of the solicitor, or other



prosecuting officer as set forth in G.S. 15-189, showing that no appeal has been entered, have not been transmitted to the warden of the State penitentiary at Raleigh, North Carolina, in time to carry out the sentence of death on the date fixed by the court in said judgment or sentence of death, such condemned person, convict or felon shall be executed, in the manner heretofore provided in this article, upon the third Friday after the filing of the opinion or order of the Supreme Court or other competent judicial tribunal as aforesaid, or, in case of a reprieve by the Governor, such condemned person, convict or felon shall be executed in the manner heretofore provided in this article upon the third Friday after the expiration or termination of such reprieve; or in case certificates of the clerk of the superior court and of the solicitor, or other prosecuting officer provided for in G.S. 15-189, showing that no notice of appeal has been given, are not received in the office of the warden of the State penitentiary at Raleigh, North Carolina, in time to carry out sentence of death upon the date provided for in said judgment or sentence of death, then said convict or felon shall be executed in the manner heretofore provided in this article upon the third Friday after the date of the receipt of said certificates of the clerk and solicitor, or other prosecuting officer, showing that no notice of appeal has been given or entered; and it shall be the duty of the clerk of the Supreme Court, and of any other competent tribunal, as aforesaid, or the clerk thereof, to notify the warden of the penitentiary of the date of the filing of the opinion or order of such court or other judicial tribunal, and in case of a reprieve by the Governor, it shall be the duty of the Governor to give notice to the warden of the State penitentiary of the date of the expiration of such reprieve. (1909, c. 443, s. 6; C. S., s. 4663; 1925, c. 55; 1951, c. 244, ss. 1, 2.)

Upon appeal from sentence of death, it is necessary that the Supreme Court find that there was no error in the trial before the sentence can be carried out. *State v. Hawley*, 229 N.C. 167, 48 S.E.2d 35 (1948).

Applied in *Miller v. State*, 237 N.C. 29, 74 S.E.2d 513 (1953).

Cited in *State v. Calcutt*, 219 N.C. 545, 15 S.E.2d 9 (1941).

**§ 15-195. New trial granted, prisoner taken to place of trial.** — Should a new trial be granted the condemned person, convict or felon against whom sentence of death has been pronounced, after he has been conveyed to the penitentiary, he shall be conveyed back to the place of trial by such guard or guards as the warden of the penitentiary shall direct, their expenses to be paid as is now provided by law for the conveyance of convicts to the penitentiary. (1909, c. 443, s. 7; C. S., s. 4664.)

**§ 15-196. Disposition of body.** — Upon application, written or verbal, of any relative as near as the degree of fourth cousin of the person executed, made at any time prior to the execution or on the morning thereof, the body, after execution, shall be prepared for burial under the supervision of the warden or deputy warden and shall be returned to the nearest railroad station of the relative or relatives asking for such body. In the event that no relative asks for the body of such executed person, convict or felon, the same shall be disposed of as other bodies of convicts dying in the penitentiary. (1909, c. 443, s. 9; C. S., s. 4665; 1925, c. 275, s. 6.)

**Cross Reference.**—As to disposition of other bodies of convicts, see § 90-212.

## ARTICLE 20.

### *Suspension of Sentence and Probation.*

**§ 15-197. Suspension of sentence and probation.**—After conviction or plea of guilty or nolo contendere for any offense, except a crime punishable by death or life imprisonment, the judge of any court of record with criminal ju-

risdiction may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation. All conditional releases by way of suspension of rendition of sentence, suspension of execution of sentence, or otherwise may be modified as is provided by the terms of this article. (1937, c. 132, s. 1; 1963, c. 632, s. 1.)

**Cross References.**—As to suspension of sentence in bastardy proceedings, see § 49-8. As to probation in cases of prostitution, see § 14-208. As to restoration of citizenship in case of pardon or suspension of judgment, see § 13-6.

**Editor's Note.**—For a discussion of the act from which this article was codified, see 15 N.C.L. Rev. 345.

For comment on 1939 amendatory act, see 17 N.C.L. Rev. 350.

The 1963 amendment added the second sentence.

For note on suspension of sentence, see 31 N.C.L. Rev. 195 (1953).

For article on punishment for crime in North Carolina, see 17 N.C.L. Rev. 205.

**History.** — For nearly half a century prior to 1937, the trial judges in North Carolina operated a system of probation on their own initiative, permitted convicted criminals to go at large on specified conditions, and arrested them upon bench warrants if the terms of probation were violated. Either the sentence of imprisonment would be formally entered and execution suspended on conditions, or prayer for judgment would be continued in like manner. Since 1937 this power has been expressly continued by this article as a part of the State's probation system. *Pelley v. Colpoys*, 122 F.2d 12 (D. C. Cir. 1941).

**Section Read with § 15-200.**—The general authority recognized in this section is to be read in connection with the limitation fixed by § 15-200. *State v. Gibson*, 233 N.C. 691, 65 S.E.2d 508 (1951).

**Inherent Power of Court.**—A court has the inherent power to suspend a judgment or stay of execution of a sentence in a criminal case. This article did not withdraw this authority from the courts. It provides a procedure which is cumulative and concurrent rather than exclusive. *State v. Simmington*, 235 N.C. 612, 70 S.E.2d 842 (1952).

Courts having jurisdiction may pronounce judgment as by law provided; and then, with the defendant's consent, express or implied, suspend execution thereof upon prescribed conditions. Long recognized as an inherent power of the court, such authority is now recognized expressly by statute. *State v. Cole*, 241 N.C. 576, 86 S.E.2d 203 (1955).

The inherent power of a court having jurisdiction to suspend judgment or stay execution of sentence on conviction in a criminal case for a determinate period and for a reasonable length of time has been recognized and upheld in this jurisdiction. *State v. Miller*, 225 N.C. 213, 34 S.E.2d 143 (1945); *State v. Griffin*, 246 N.C. 680, 100 S.E.2d 49 (1957).

**Probation Must Be Consistent with Right of Appeal.**—Where the privilege of probation, granted by this article, is so conditioned as to be inconsistent with a defendant's right of appeal, the judgment is erroneous. *State v. Calcutt*, 219 N.C. 545, 15 S.E.2d 9 (1941).

**An order suspending the imposition or execution of sentence on condition** is favorable to the defendant, and when he sits by as the order is entered and does not appeal, he impliedly consents and thereby waives or abandons his right to appeal on the principal issue of his guilt or innocence and commits himself to abide by the stipulated conditions. He may not thereafter complain that his conviction was not in accord with due process of law. He is relegated to his right to contest imposition of judgment or execution of sentence for want of evidence to support a finding that conditions imposed have been breached, or that the conditions are unreasonable or unenforceable, or are for an unreasonable length of time. And the court may not pronounce judgment or invoke execution, after adjournment of the term, so long as defendant observes the conditions imposed. *State v. Miller*, 225 N.C. 213, 34 S.E.2d 143 (1945).

Where on conviction of defendant in a criminal case and judgment and execution are suspended on condition, without appeal taken, the court moves to impose sentence on the grounds of conditions broken, the defenses available to defendant involve questions of fact for the judge and not issues of fact for the jury, and no appeal is provided by statute from an adverse ruling, so that defendant's remedy is by certiorari or recordari. *State v. Miller*, 225 N.C. 213, 34 S.E.2d 143 (1945).

Where there is a conviction and a sentence imposed, the fact that the court may suspend the judgment or its execution upon payment of costs or other conditions, and no appeal is taken, the judgment will

be considered final when the time for appealing the case has expired, and the defendant may not be heard, thereafter to complain on the ground that his conviction was not in accord with due process of law. *Barbour v. Scheidt*, 246 N.C. 169, 97 S.E.2d 855 (1957).

**Suspension of Sentence on Condition Defendant Not Operate Motor Vehicle during Period of Suspension.**—Upon defendant's conviction of operating a motor vehicle while under the influence of intoxicating beverage, the court may not suspend judgment upon condition that the defendant not operate a motor vehicle upon the public roads during the period of suspension unless defendant consents thereto, expressly or by implication. *State*

*v. Cole*, 241 N.C. 576, 86 S.E.2d 203 (1955); *State v. Green*, 251 N.C. 141, 110 S.E.2d 805 (1959).

**Discretion of Trial Judge.**—The propriety of suspending the sentence, ordinarily, is a matter resting in the sound discretion of the trial judge. The General Assembly has endeavored to implement the power of the court in this respect by making further provisions for probation and supervision in this and the following sections. *State v. Stallings*, 234 N.C. 265, 66 S.E.2d 822 (1951).

**Cited in** *State v. Ward*, 222 N.C. 316, 22 S.E.2d 922 (1942); *State v. Graham*, 225 N.C. 217, 34 S.E.2d 146 (1945); *State v. Jackson*, 226 N.C. 66, 36 S.E.2d 706 (1946).

**§ 15-198. Investigation by probation officer.**—When directed by the court the probation officer shall fully investigate and report to the court in writing the circumstances of the offense and the criminal record, social history, and present condition of the defendant, including, whenever practicable, the findings of a physical and mental examination of the defendant. When the services of a probation officer are available to the court, no defendant charged with a felony, and, unless the court shall direct otherwise in individual cases, no other defendant shall be placed on probation or released under suspension of sentence until the report of such investigation shall have been presented to and considered by the court. (1937, c. 132, s. 2.)

**Editor's Note.**—For note on right of confrontation at presentence investigation, see 41 N.C.L. Rev. 260 (1963).

**This section establishes the policy that full investigation may be made before sentencing.** *State v. Pope*, 257 N.C. 326, 126 S.E.2d 126 (1962), commented on in 41 N.C.L. Rev. 260 (1963).

**Presentence investigations are favored and encouraged.** *State v. Pope*, 257 N.C. 326, 126 S.E.2d 126 (1962), commented on in 41 N.C.L. Rev. 260 (1963).

**Investigation May Be Made by Judge or Probation Officer.**—The presentence investigation may be made by a probation officer or by the trial judge himself.

*State v. Pope*, 257 N.C. 326, 126 S.E.2d 126 (1962), commented on in 41 N.C.L. Rev. 260 (1963).

**Information to Be Adduced by Investigation.**—The investigation may adduce information concerning defendant's criminal record, if any, his moral character, standing in the community, habits, occupation, social life, responsibilities, education, mental and physical health, the specific charge against him, and other matters pertinent to a proper judgment. *State v. Pope*, 257 N.C. 326, 126 S.E.2d 126 (1962), commented on in 41 N.C.L. Rev. 260 (1963).

**§ 15-199. Conditions of probation.**—The court shall determine and may impose, by order duly entered, and may at any time modify the conditions of probation and may include among them the following, or any other: That the probationer shall:

- (1) Avoid injurious or vicious habits;
- (2) Avoid persons or places of disreputable or harmful character;
- (3) Report to the probation officer as directed;
- (4) Permit the probation officer to visit at his home or elsewhere;
- (5) Work faithfully at suitable, gainful employment as far as possible and save his earnings above his reasonably necessary expenses;
- (6) Remain within a specified area;
- (7) Deposit with the clerk of the court a bond for his appearance at such bond to be paid in cash from his earnings in such installments and at is unable to provide the bond otherwise, the court may require the



- bond to be paid in cash from his earnings in such installments and at such intervals as the court may direct;
- (8) Deposit with the clerk of the court from his earnings a savings account in such installments and at such intervals as the court may direct; and the clerk shall thereupon deposit such funds in the savings account in an institution whose accounts are insured by an agency of the federal government and the principal plus interest earned shall be paid to the probationer upon his discharge or earlier upon order of the court;
  - (9) Pay a fine in one or several sums as directed by the court;
  - (10) Make reparation or restitution to the aggrieved party for the damage or loss caused by his offense, in an amount to be determined by the court;
  - (11) Support his dependents;
  - (12) Waive extradition to the State of North Carolina from any jurisdiction in or outside the United States;
  - (13) Violate no penal law of any state or the federal government and be of general good behavior;
  - (14) With the defendant's consent and with a statement of the availability of jail accommodations, he may be required to report to the sheriff of the county or to the chief of police of any municipality or other law enforcement officer and submit himself to be incarcerated in the county or municipal jail or other designated place of confinement during weekends or at such other times or intervals as the court may direct. The court may, with the consent of the defendant, require the surrender of his earnings less standard payroll deductions required by law, to the county board of public welfare or other responsible agency. After deducting from the earnings the amount determined to be the cost of the defendant's keep while incarcerated, the balance shall be applied as may be needed for the support and maintenance of the defendant's dependents, and any sum remaining shall be released to the defendant upon the expiration of his suspension or at other times as the court may direct. Upon revocation of probation or suspension of sentence, the court shall certify in the judgment of revocation the time or number of days the probationer was incarcerated and such time shall be deducted from the term of the sentence suspended, and so stipulated in the commitment. Provided, that in no event shall the number of days of incarceration prior to revocation exceed the length of the original suspended sentence: (1937, c. 132, s. 3; 1957, c. 1351; 1963, c. 54; c. 632, s. 2.)

**Editor's Note.**—The first 1963 amendment added subdivisions (12) and (13).

The second 1963 amendment added subdivision (14).

**To Remain Law-Abiding.** — Upon conviction of a misdemeanor, judgment was entered that defendant be imprisoned in the county jail for a term of eight months, with further provision that execution of the judgment should be suspended upon the payment of a fine and upon further condition that defendant remain law-abiding for a period of five years. Held: The condition upon which execution was sus-

pending was twofold; first, the payment of the fine and, second, that defendant remain law-abiding for a term of five years; and upon conviction of defendant of a subsequent violation of the criminal law within the period of five years, the order of the court putting into effect the suspended execution is proper, notwithstanding defendant had paid the fine, defendant's contention that judgment suspending execution did not contemplate imprisonment if the fine should be paid, being untenable. *State v. Wilson*, 216 N.C. 130, 4 S.E.2d 440 (1939).

**§ 15-200. Termination of probation, arrest, subsequent disposition.** —The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended, terminated or suspended by the court at any time, within

the above limit. Upon the satisfactory fulfillment of the conditions of probation or suspension of sentence the court shall by order duly entered discharge the defendant. At any time during the period of probation or suspension of sentence, the court may issue a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence. Any police officer, or other officer with power of arrest, upon the request of the probation officer, may arrest a probationer without a warrant. In case of an arrest without a warrant the arresting officer shall have a written statement signed by said probation officer setting forth that the probationer has, in his judgment, violated the conditions of probation; and said statement shall be sufficient warrant for the detention of said probationer in the county jail, or other appropriate place of detention, until said probationer shall be brought before the judge of the court. Such probation officer shall forthwith report such arrest and detention to the judge of the court, or in superior court cases to the judge holding the courts of the district, or the resident judge, or any judge commissioned at the time to hold court in said district, and submit in writing a report showing in what manner the probationer has violated probation. Upon such arrest, with or without warrant, the court shall cause the defendant to be brought before it in or out of term and may revoke the probation or suspension of sentence, and shall proceed to deal with the case as if there had been no probation or suspension of sentence. If at any time during the period of probation or suspension of sentence a warrant is issued and the defendant is arrested for a violation of any of the conditions of probation or suspension of sentence, or in the event any person is arrested at the instance of a probation officer, the defendant shall be allowed to give bond pending a hearing before the judge of the court, and the court issuing the order of arrest shall in said order, fix the amount of the appearance bond, or if appearance bond should not be fixed by the court, the officer having the defendant in charge shall take sufficient justified bail for the defendant's appearance at said hearing and the bond shall be returnable at such time and place as shall be designated by the probation officer.

Where a probationer resides in, or violates the terms of his probation in, a county and judicial district other than that in which said probationer was placed on probation, concurrent jurisdiction is hereby vested in the resident judge of superior court of the district in which said probationer resides or in which he violates the terms of his probation, or the judge of superior court holding the courts of such district, or a judge of the superior court commissioned to hold court in such district, to issue warrants for the arrest of such probationer, to discharge such probationer from probation, to continue, extend, suspend or terminate the period of probation of such probationer, and to revoke probation and enter judgment or put into effect suspended sentences of probation judgment, for breach of the conditions of probation, as fully as same might be done by the courts of the county and district in which such probationer was placed on probation, when such probationer was originally placed on probation by a superior court judge; provided, that the court may, in its discretion, for good cause shown, and shall on request of the probationer, return such probationer for hearing and disposition to the county or judicial district in which such probationer was originally placed on probation; provided, that in cases where the probation is revoked in a county other than the county of original conviction, the clerk in such county revoking probation may record the order of revocation in the judge's minute docket, which shall constitute sufficient permanent record of the proceedings in that court, and shall send one copy of the order revoking probation to the North Carolina Prison Department to serve as a temporary commitment, and shall send the original order revoking probation and all other papers pertaining thereto, to the county of original conviction to be filed with the original records; the clerk of the county of original conviction shall then issue a formal commitment to the North Carolina Prison Department. (1937, c. 132, s. 4; 1939, c. 373; 1953, c. 43; 1955, c. 120; 1959, c. 424; 1961, c. 1185.)

**Editor's Note.**—As to comment on the 1953 amendment, see 31 N.C.L. Rev. 405 (1953).

**Common-Law System.** — Under the North Carolina law the trial court had authority to issue its *capias* for petitioner's arrest on the suspended sentence either under the common-law system which prevailed in 1935 or under the provisions of this article. *Pelley v. Colpoys*, 122 F.2d 12 (D.C. Cir. 1941).

**This Section Limits Authority Recognized by § 15-197.**—See annotations under § 15-197.

**Suspension May Be for Five Years Although Maximum Imprisonment Is Two Years.**—The superior court has the power to suspend execution of a sentence in a criminal prosecution for a period of five years, notwithstanding that the maximum imprisonment authorized for the offense of which defendant is convicted is two years. *State v. Wilson*, 216 N.C. 130, 4 S.E.2d 440 (1939); *State v. McMilliam*, 243 N.C. 775, 92 S.E.2d 205 (1956).

**The period during which the execution of a sentence in a criminal case may be suspended on conditions has been fixed as five years, regardless of the term of imprisonment authorized by the law.** *State v. Gibson*, 233 N.C. 691, 65 S.E.2d 508 (1951).

The maximum period during which the execution of a sentence in a criminal case may be suspended on conditions is five years. A suspension of sentence for a period in excess of that authorized by this section is not void in toto. Ordinarily it is valid to the extent the court had power to suspend or stay execution and void merely as to the excess. *State v. McBride*, 240 N.C. 619, 83 S.E.2d 488 (1954).

**Violation of Terms of Sentence Is Not a Jury Matter.**—A hearing to determine whether or not the terms of a suspended sentence have been violated is not a jury matter, but is to be determined in the sound discretion of the judge. *State v. Coffey*, 255 N.C. 293, 121 S.E.2d 736 (1961).

**It Need Not Be Proved beyond Rea-**

**sonable Doubt.**—The alleged violation of the terms of a suspended sentence need not be proven beyond a reasonable doubt. All that is required is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has violated a valid condition upon which the sentence was suspended. *State v. Coffey*, 255 N.C. 293, 121 S.E.2d 736 (1961).

**Absence from State after Service of Capias.**—Defendant was convicted upon an indictment containing two counts. Execution of sentence on one count was suspended upon specified conditions for a period of five years and prayer for judgment was continued on the other count for a like period. Thereafter, upon alleged violation of conditions of probation, *capias* was issued under this section, and alias *capias* subsequently served upon defendant out of the State before the expiration of the period of probation. Defendant refused to appear, and by habeas corpus and numerous appeals in his fight against extradition, delayed his appearance in court for hearing upon the alleged violation of conditions of probation beyond the period of probation. It was held that upon issuance of notice or service of *capias* the defendant was under duty to respond and appear and time ceased to run against the period of probation during the period defendant absented himself from the State and was a fugitive from justice. *State v. Pelley*, 221 N.C. 487, 20 S.E.2d 850 (1942).

**Effect of Conviction in Another State.**—Order suspending a sentence on condition "that the defendant be of good behavior and violate none of the laws of the State" was not violated by proof that defendant was convicted of a criminal law in another state. *State v. McBride*, 240 N.C. 619, 83 S.E.2d 488 (1954). See *State v. Millner*, 240 N.C. 602, 83 S.E.2d 546 (1954).

**Applied in** *State v. Brown*, 253 N.C. 195, 116 S.E.2d 349 (1960).

**Stated in** *State v. Griffin*, 246 N.C. 680, 100 S.E.2d 49 (1957).

**Cited in** *State v. Stallings*, 234 N.C. 265, 66 S.E.2d 822 (1951).

**§ 15-200.1. Notice of intention to pray revocation of probation or suspension; appeal from revocation.**—In all cases of probation or suspension of sentence in the superior courts and in courts inferior to the superior courts, before a probation or suspension of sentence may be revoked, the probation officer, solicitor or other officer shall inform the probationer in writing of his intention to pray the court to revoke probation or suspension and to put the suspended sentence into effect, and shall set forth in writing the grounds upon which revocation is prayed. The court, at the request of the defendant, shall grant a reasonable time for the defendant to prepare his defense. In all cases where



probation or suspension of sentence entered in a court inferior to the superior court is revoked and sentence is placed into effect, the defendant shall have the right of appeal therefrom to the superior court, and, upon such appeal, the matter shall be determined by the judge without a jury, but only upon the issue of whether or not there has been a violation of the terms of probation or of the suspended sentence. Upon its finding that the conditions were violated, the superior court shall enforce the judgment of the lower court unless the judge finds as a fact that circumstances and conditions surrounding the terms of the probation and the violation thereof have substantially changed, so that enforcement of the judgment of the lower court would not accord justice to the defendant, in which case the judge may modify or revoke the terms of the probationary or suspended sentence in the court's discretion. Appeals from lower courts to the superior courts from judgments revoking probation or invoking suspended sentences may be heard in term or out of term, in the county or out of the county by the resident superior court judge of the district or the superior court judge assigned to hold the courts of the district, or a judge of the superior court commissioned to hold court in the district, or a special superior court judge residing in the district. (1951, c. 1038; 1963, c. 632, s. 3.)

**Editor's Note.** — The 1963 amendment rewrote this section.

**Person under Supervision of Probation Commission.**—The right to appeal from order executing a suspended judgment does not apply to a person under the supervision of the Probation Commission. *State v. Thomas*, 236 N.C. 196, 72 S.E.2d 525 (1952).

**Hearing in Superior Court Must Be De Novo.**—On appeal from an order of an inferior court putting into effect a suspended sentence, the hearing in superior court must be de novo, and when the superior court merely finds that there was evidence to support the findings and order of the inferior court, and affirms the order, the cause must be remanded. *State v. Coffey*, 255 N.C. 293, 121 S.E.2d 736 (1961).

**Superior Court Is Not Limited to Evidence Heard in Inferior Court.**—Since the hearing on appeal must be de novo in superior court, that court is not limited to the evidence heard in the inferior court, and may hear and consider any competent evidence so long as it bears on the issue of whether or not there has been a violation of the terms of the suspended sentence. *State v. Coffey*, 255 N.C. 293, 121 S.E.2d 736 (1961).

**Findings of Court as to Wilfulness of Violation and Absence of Lawful Excuse.**—In order for the court to put into effect a suspended sentence, it need not find that defendant's violation of a condition or suspension of execution was wilful, all that is required being that the court find that defendant had violated a valid condition of suspension and that such violation was without lawful excuse, but when the court fails to find specific facts supporting

the conclusion that the violation was without lawful excuse, there is insufficient predicate for the order putting the suspended sentence into effect. *State v. Robinson*, 248 N.C. 282, 103 S.E.2d 376 (1958).

**Where finding of court does not state wherein defendant violated the conditions of a suspended sentence,** and there is a question as to the validity of one or more of the conditions imposed, the defendant is entitled to have the cause remanded for a specific finding as to wherein he has violated the conditions upon which the sentence was suspended. *State v. Davis*, 243 N.C. 754, 92 S.E.2d 177 (1956).

**Where matter was not heard de novo by the superior court,** on appeal thereto, as required by this section, the judgment putting the sentence into execution was set aside, and the cause remanded to the superior court for further hearing in accordance with law. *State v. Thompson*, 244 N.C. 282, 93 S.E.2d 158 (1956).

**A capias directing defendant to answer a charge of "failure to comply—\$80 in arrears in alimony"** is sufficient to constitute a substantial compliance with this section in proceedings to revoke a suspended sentence entered in a prosecution of defendant for wilful failure to support his minor children. *State v. Dawkins*, 262 N.C. 298, 136 S.E.2d 632 (1964).

**Applied in** *State v. McKinney*, 251 N.C. 346, 111 S.E.2d 189 (1959); *State v. Lance*, 261 N.C. 368, 134 S.E.2d 685 (1964); *State v. White*, 264 N.C. 600, 142 S.E.2d 153 (1965).

**Stated in** *State v. Stallings*, 234 N.C. 265, 66 S.E.2d 822 (1951).

**Cited in** *State v. Simmington*, 235 N.C. 612, 70 S.E.2d 842 (1952); *State v. Lynn*, 251 N.C. 703, 111 S.E.2d 866 (1960).

**§ 15-200.2. Bill of particulars as prerequisite to praying that suspended sentence be placed in effect.**—In any case in the superior court in which the solicitor for the State prays that a suspended sentence be placed into effect, the solicitor shall, by the day prior to the time he intends to pray judgment placing such suspended sentence into effect, cause to be served upon the defendant a bill of particulars setting forth the time, the place and the manner in which the terms and conditions of such suspended sentence are alleged to have been violated by the defendant. No form of bill of particulars must be followed and the informality or defectiveness of same is not a ground for appeal. Provided, that such notice may be waived in writing by the defendant. Provided nothing herein shall apply to a person under the supervision of the Probation Commission. (1961, c. 1000; 1963, c. 20.)

**Cross Reference.**—For subsequent provision as to notice of intention to pray revocation of suspension or probation, see § 15-200.1 as amended by Session Laws 1963, c. 632.

**Editor's Note.** — The 1963 amendment added the last proviso.

**This section applies only to revocation of suspensions in cases which originate in the superior court.** *State v. Dawkins*, 262 N.C. 298, 136 S.E.2d 632 (1964).

Thus, while a hearing in the superior court on appeal from an order of the inferior court revoking suspension of sentence is de novo, it is solely on the question whether defendant had violated the terms upon which the sentence was suspended; the jurisdiction of the superior court is derivative and limited to that question, and this section is not applicable. *State v. Dawkins*, 262 N.C. 298, 136 S.E.2d 632 (1964).

**§ 15-201. Establishment and organization of a State Probation Commission.**—There is hereby established a State Probation Commission to be composed of five members, who shall be appointed by the Governor and shall serve without a salary as members of such Commission, but shall receive their actual traveling expenses and seven dollars per diem while in the performance of their official duties. The first appointments shall be made within thirty days after March 13, 1937, and shall be made in such manner that the term of one member of the State Probation Commission shall expire each year. Their successors shall be appointed by the Governor within thirty days thereafter for terms of five years each. All vacancies occurring among the members shall be filled as soon as practicable thereafter by the Governor for the unexpired terms. This Commission shall be deemed a "commission for special purpose" within the meaning of the language of § 7 of Article XIV of the Constitution, and the membership thereof may be composed of persons holding other official positions in the State, if the Governor shall so elect.

The State Probation Commission shall organize immediately after the appointment of the first members thereof, and elect a chairman from its members. Thereafter a chairman shall be elected annually between January fifteenth and January thirtieth of each year. (1937, c. 132, s. 5; 1959, c. 1164.)

**§ 15-202. Duties and powers of the Commission; meetings; appointment of Director of Probation; qualifications.**—With respect to the administration of probation in the State, except cases within the jurisdiction of the juvenile courts, the State Probation Commission shall exercise general supervision; formulate policies; adopt general rules, not inconsistent with law, to regulate methods of procedure; and set standards for personnel. It shall meet at stated times to be fixed by it not less often than once every three months, and on call of its chairman, to consider any matters relating to probation in the State.

The executive head of the State probation system shall be a Director of Probation appointed by the State Probation Commission, subject to the approval of the Governor. A Director shall be appointed on July 1, 1963, or as soon thereafter as practicable, for a term expiring July 1, 1966. Subsequent appointments to this office shall be made for a term of four (4) years, except those made to fill out an unexpired term in case of the death, resignation, or removal of a Director.

The Director shall administer the affairs of the State probation system in accordance with controlling law under rules and regulations proposed by him and approved by the State Probation Commission. The Commission may remove the Director, with the consent and approval of the Governor, at any time after notice and hearing for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. The salary of the Director of Probation shall be set by the Governor subject to the approval of the Advisory Budget Commission.

The person appointed as Director of Probation shall be qualified by education, training, experience and temperament for the duties of the office. (1937, c. 132, s. 6; 1943, c. 638; 1957, c. 541, s. 2; 1963, c. 914, s. 1.)

**Cross Reference.**—As to administration of probation with respect to cases within the jurisdiction of juvenile courts, see § 110-31 et seq.

**Editor's Note.**—The 1963 amendment rewrote the second paragraph.

**§ 15-203. Duties of the Director of Probation; appointment of probation officers; reports; requests for extradition.**—The Director of Probation shall be responsible for the appointment, promotion, demotion, and discharge of other probation system personnel. The compensation and duties of other probation system personnel shall be determined by the Director of Probation in conformity with the provisions of the Executive Budget Act and the State Personnel Act.

The Director of Probation shall direct the work of the probation officers appointed under this article. He shall consult and cooperate with the courts and institutions in the development of methods and procedure in the administration of probation, and shall arrange conferences of probation officers and judges. He shall make an annual written report with statistical and other information to the Probation Commission and the Governor. He is authorized to present to the Governor written applications for requisitions for the return of probationers who have broken the terms of their probation, and are believed to be in another state, and he shall follow the procedure outlined for requests for extradition as set forth in G.S. 15-77. (1937, c. 132, s. 7; 1959, c. 127; 1963, c. 914, s. 2.)

**Editor's Note.** — The 1963 amendment rewrote the first paragraph.

**§ 15-203.1:** Repealed by Session Laws 1963, c. 914, s. 6.

**Editor's Note.**—See now § 15-203.

**§ 15-204. Assignment and compensation and oath of probation officers.**—Probation officers appointed under this article shall be assigned to serve in such courts or districts or otherwise as the Director of Probation may determine. They shall be paid annual salaries to be fixed by the Probation Commission, and shall also be paid traveling and other necessary expenses incurred in the performance of their official duties as probation officers when such expense accounts have been authorized and approved by the Director of Probation.

Each person appointed as a probation officer shall take an oath of office before the judge of the court or courts in which he is to serve, which oath shall be as follows:

"I, . . . . ., do solemnly and sincerely swear that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain, and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God,"

and shall be noted of record by the clerk of the court. (1937, c. 132, s. 8.)

**§ 15-205. Duties and powers of the probation officers.**—A probation officer shall investigate all cases referred to him for investigation by the judges



of the courts or by the Director of Probation, and shall report in writing thereon. He shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct him regarding the same. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring reports, and in other ways, and shall report thereon in writing as often as the court or the Director of Probation may require. Such officer shall use all practicable and suitable methods, not inconsistent with the conditions imposed by the court, or the Director of Probation, to aid and encourage persons on probation to bring about improvement in their conduct and condition. Such officer shall keep detailed records of his work; shall make such reports in writing to the Director of Probation as he may require; and shall perform such other duties as the Director of Probation may require. A probation officer shall have, in the execution of his duties, the powers of arrest and, to the extent necessary for the performance of his duties, the same right to execute process as is now given, or that may hereafter be given by law, to the sheriffs of this State. (1937, c. 132, s. 9.)

**§ 15-206. Co-operation with Commissioner of Parole and officials of local units.**—It shall be the duty of the Director of Probation and the Commissioner of Parole to co-operate with each other to the end that the purposes of probation and parole may be more effectively carried out. When requested, each shall make available to the other case records in his possession, and in cases of emergency, where time and expense can be saved, shall provide investigation service.

It is hereby made the duty of every city, county, or State official or department to render all assistance and co-operation within his or its fundamental power which may further the objects of this article. The State Probation Commission, the Director of Probation, and the probation officers are authorized to seek the co-operation of such officials and departments, and especially of the county superintendents of public welfare and of the State Board of Public Welfare. (1937, c. 132, s. 10; 1961, c. 139, s. 2.)

**§ 15-207. Records treated as privileged information.** — All information and data obtained in the discharge of official duty by any probation officer shall be privileged information, shall not be receivable as evidence in any court, and shall not be disclosed directly or indirectly to any other than the judge or to others entitled under this article to receive reports, unless and until otherwise ordered by a judge of the court or the Director of Probation. (1937, c. 132, s. 11.)

**§ 15-208. Payment of salaries and expenses.** — All salaries and expenses necessary for carrying out the provisions of this article shall be fixed in accordance with the Executive Budget Act and the Personnel Act, and shall be paid by the State Highway and Public Works Commission out of the State highway funds, under direction of the Director of the Budget. (1937, c. 132, s. 12.)

**§ 15-209. Accommodations for probation officers.** — The county commissioners in each county in which a probation officer serves shall provide, in or near the courthouse, suitable office space for such officer. (1937, c. 132, s. 13.)

## ARTICLE 21.

### *Segregation of Youthful Offenders.*

**§ 15-210. Purpose of article.**—It is the purpose of this article to improve the chances of rehabilitation of youthful offenders sentenced to imprisonment by preventing, as far as practicable, their association during their terms of imprisonment with older and more experienced criminals. (1947, c. 262, s. 1.)

**Editor's Note.** — For brief comment on prison camp for youthful and first term article, see 25 N.C.L. Rev. 404. As to offenders, see §§ 148-49.1 through 148-49.5.

§ 15-211. **Definition of "youthful offender."** — As used in this article a "youthful offender" is a person

- (1) Who, at the time of imposition of sentence, is less than twenty-one years of age, and
- (2) Who has not previously served a term or terms or parts thereof totaling more than six months in jail or other prison. (1947, c. 262, s. 1.)

§ 15-212. **Sentence of youthful offender.**—Any judge of any court who sentences a youthful offender to imprisonment in the State prison or to jail to be assigned to work under the State Prison Department, if in his opinion such person will be benefited by being kept separate, while performing his sentence, from prisoners other than youthful offenders, shall, as a part of the sentence of such person, provide that he shall be segregated as a youthful offender. (1947, c. 262, s. 1; 1957, c. 349, s. 10.)

§ 15-213. **Duty of Director of Prisons as to segregation of youthful offenders.**—The Director of Prisons shall segregate all youthful offenders whose sentences provide for such segregation and shall neither quarter nor work such prisoners, except in cases of emergency or when temporarily necessary, with other prisoners not coming within that classification.

The Director of Prisons shall, insofar as is possible, provide personnel specially qualified by training, experience and personality to operate units that may be set up to effect the segregation provided in this article. (1947, c. 262, s. 1; 1955, c. 233, s. 9.)

§ 15-214. **Extension to persons sentenced prior to July 1st, 1947.**

—(a) The benefits of this article, as far as practicable, shall also be extended to:

- (1) All persons who on July 1st, 1947, shall be serving sentences in the State prison or sentences to jail with assignment to work under the State Prison Department, and
- (2) All persons who shall be so sentenced prior to July 1st, 1947, even though they begin to serve such sentences after that date,

Provided such persons at the time of imposition of sentence came within the meaning of the term "youthful offender" as used in this article.

(b) The State Prison Department shall determine which of the prisoners coming within the provisions of subsection (a) of this section will probably be benefited by being segregated as provided in § 15-213, and such prisoners shall thereafter be so segregated as if their sentences so provided. (1947, c. 262, s. 1; 1957, c. 349, s. 10.)

§ 15-215. **Termination of segregation.**—The Director of Prisons shall have authority to terminate the segregation as a youthful offender of any prisoner who, in the opinion of the Director, exercises a bad influence upon his fellow prisoners, or fails to take proper advantage of the opportunities offered by such segregation. (1947, c. 262, s. 1; 1955, c. 238, s. 9.)

§ 15-216. **Persons to whom article not applicable.** — (a) Since offenders who may be sentenced to terms of less than six months, but who come within the meaning of the term "youthful offender" as used in this article, may be placed upon probation if the judge imposing sentence is of the opinion that they may be rehabilitated, this article shall not apply to any person sentenced for a term of less than six months.

(b) Since special provision has already been made for suitable quarters for women prisoners, and since judges may specifically assign women convicted of offenses to such quarters, this article shall not apply to women. (1947, c. 262, s. 1.)

## ARTICLE 22.

*Review of Criminal Trials.*

§ 15-217. **Institution of proceeding; effect on other remedies.**—Any person imprisoned in the penitentiary, Central Prison, common jail of any county or imprisoned in the common jail of any county and assigned to work under the supervision of the State Prison Department, who asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of the State of North Carolina or both, or that the court was without jurisdiction to impose the sentence, or that the sentence exceeds the maximum authorized by law, or that the sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under a writ of habeas corpus, writ of coram nobis, or other common-law or statutory remedy, as to which there has been no prior adjudication by any court of competent jurisdiction, may institute a proceeding under this article.

The remedy herein provided is not a substitute for nor does it affect any remedies which are incident to the proceedings in the trial court, or any remedy of direct review of the sentence or conviction, but, except as otherwise provided in this article it comprehends and takes the place of all other common-law and statutory remedies which have heretofore been available for challenging the validity of incarceration under sentence of death or imprisonment, and shall be used exclusively in lieu thereof. (1951, c. 1083, s. 1; 1957, c. 349, s. 10; 1959, c. 21; 1965, c. 352, s. 1.)

**Editor's Note.** — The 1965 amendment rewrote this section.

Prior to the 1965 amendment this section was limited to the review of constitutional defects in criminal trials. Those cases cited in the note below which were decided prior to the amendment should be read in the light of the former limitation.

For brief comment on this article, see 29 N.C.L. Rev. 390.

This article, known as the **North Carolina Post-Conviction Hearing Act**, establishes a new judicial proceeding by which the superior court may probe beneath the adjudication in the original criminal action in which an imprisoned petitioner was convicted and sentenced, and grant him appropriate relief in respect to his conviction and sentence in case it determines that two specified conditions concur. These conditions are as follows: (1) That there was a substantial denial of the constitutional rights of the petitioner in the original criminal action in which he was convicted, and (2) that there has been no prior adjudication as to such constitutional rights by any court of competent jurisdiction. *Miller v. State*, 273 N.C. 29, 74 S.E.2d 513 (1953).

**And Resembles Common-Law Writ of Coram Nobis.**—The remedy afforded by the North Carolina Post-Conviction Hearing Act closely resembles that available under the common-law writ of coram nobis. *State v. Merritt*, 264 N.C. 716, 142 S.E.2d 687 (1965).

**Purpose of Article.** — The Post-Conviction Hearing Act is not designed to add to the law's delays by giving an accused two days in court where one is sufficient for the doing of substantial justice under fundamental law. *Miller v. State*, 237 N.C. 29, 74 S.E.2d 513 (1953); *Brown v. North Carolina*, 341 F.2d 87 (4th Cir. 1965).

It is not devised to confer upon an accused, who is defended by counsel of his own selection or competent counsel appointed by the court, a legal privilege, at his own election, to have his rights arising under the common law and the statutes adjudicated at a time of the State's choosing in the original criminal action, and his rights arising under the constitutions of his state and nation adjudicated at a subsequent time of his own choosing in another proceeding. *Miller v. State*, 237 N.C. 29, 74 S.E.2d 513 (1953).

This article was not intended to operate as a substitute for an appeal. It was not designed merely to afford to a person heretofore convicted of crime the right to present to the Supreme Court assignments of error in the trial in which he was convicted and from which he did not appeal. *State v. Cruse*, 238 N.C. 53, 76 S.E.2d 320 (1953); *State v. Graves*, 251 N.C. 550, 112 S.E.2d 85 (1960).

This article was enacted to provide an adequate and available post-trial remedy for persons imprisoned under judicial decrees who suffered substantial and unadjudicated deprivations of their constitu-



tional rights in the original criminal actions resulting in their convictions because they were prevented from claiming such constitutional rights in the original criminal actions by factors beyond their control. *Miller v. State*, 237 N.C. 29, 74 S.E.2d 513 (1953); *State v. Graves*, 251 N.C. 550, 112 S.E.2d 85 (1960). See *State v. Cruse*, 238 N.C. 53, 76 S.E.2d 320 (1953); *Brown v. North Carolina*, 341 F.2d 87 (4th Cir. 1965).

The Post-Conviction Hearing Act is not a substitute for appeal. It cannot be used to raise the question whether errors were committed in the course of the trial. The inquiry is limited to a determination whether the petitioners were denied the right to be represented by counsel, to have witnesses, and a fair opportunity to prepare and to present their defense. The question whether these rights have been denied, is one of law. *State v. Wheeler*, 249 N.C. 187, 105 S.E.2d 615 (1958).

Like the Illinois act on which it was modeled, the North Carolina Post-Conviction Hearing Act was passed to replace the ancient and little known or understood writ of error coram nobis, insofar as the review of the constitutionality of criminal trials is concerned. *State v. Merritt*, 264 N.C. 716, 142 S.E.2d 687 (1965).

**Article Affords Review Only in Case of Substantial Denial of Constitutional Right.**—It was not the intention of the legislature to afford under this article a general review of every error a prisoner who is dissatisfied with his conviction and sentence may assert, but only in those instances in which a substantial denial of a constitutional right has been made to appear. *State v. Cruse*, 238 N.C. 53, 76 S.E.2d 320 (1953).

**And Hearing Is Precluded Where There Has Been Prior Adjudication of Constitutional Question.**—Defendant is precluded from seeking a post-conviction hearing when there has been a prior adjudication of the constitutional question by any court of competent jurisdiction. In *re McCoy*, 233 F. Supp. 409 (E.D.N.C. 1964).

Under this article a prisoner has the right to petition the court which sentenced him for relief upon allegation that in the proceedings which resulted in his conviction there was substantial denial of his rights under the Constitution of the United States. The article gives the court full power to afford relief if it finds merit in the petition. Where a prisoner has not attempted to avail himself of this remedy, he has not exhausted remedies available in the courts of the State, which is a pre-

requisite to the right to apply to a federal court for a writ of habeas corpus. *Quick v. Anderson*, 194 F.2d 183 (4th Cir. 1952).

**A new trial awarded under this article is a retrial of the whole case, verdict, judgment, and sentence.** *State v. White*, 262 N.C. 52, 136 S.E.2d 205 (1964).

**And Defendant Must Accept Hazards as Well as Benefits.**—Where defendant petitions and obtains a new trial under this article, he must accept the hazards as well as the benefits, and may not complain if sentence imposed upon conviction in the second trial exceeds that imposed at the first. *State v. White*, 262 N.C. 52, 136 S.E.2d 205 (1964).

**No Credit Allowed on Second Conviction for Time Served on First Sentence.**—No statute requires that a defendant convicted a second time upon a new trial obtained under this article shall be given credit for the time he has served on the sentence imposed at the first trial, and when the sentence imposed at the second trial, together with the time served on the first sentence, is within the maximum permitted by law, it will not be disturbed on appeal. *State v. White*, 262 N.C. 52, 136 S.E.2d 205 (1964).

**A delay of some two years in the hearing of a petition for a post-conviction review would seem inexcusable.** *State v. Hayes*, 261 N.C. 648, 135 S.E.2d 653 (1964).

**Voluntary Relinquishment of Rights.**—A litigant does not suffer a "denial of his rights," within the meaning of this section, when he intentionally and voluntarily relinquishes them. *Miller v. State*, 237 N.C. 29, 74 S.E.2d 513 (1953).

**Delay in Filing Petition Held Not Due to Laches.**—Where petitioner was tried in 1948 without the benefit of counsel, and subsequently escaped and was confined to a federal penitentiary from 1951 to 1962, and the decision in *Gideon v. Wainwright*, 372 U.S. 335, 83 Sup. Ct. 792, 9 L. Ed. 2d 799 (1963), did not give him grounds for relief until 1963, such fifteen-year delay in filing his petition was held not to be due to laches or negligence on his part. *State v. Johnson*, 263 N.C. 479, 139 S.E.2d 692 (1965).

**The necessity for the enforcement of rules governing appeals in North Carolina in no way constitutes an encroachment on the rights of a defendant which come within the purview of this and the following sections.** *State v. Davis*, 248 N.C. 318, 103 S.E.2d 289 (1958).

**Petition Insufficient to Show Violation**

**of Rights.**—See *State v. Hackney*, 240 N.C. 230, 81 S.E.2d 778 (1954).

**Failure to Observe §§ 15-46 and 15-47.**—While there are circumstances under which a failure to observe the provisions of §§ 15-46 and 15-47 may not affect constitutional rights, yet where an offense as serious as robbery with firearms is charged, such failure must be given great weight in a hearing under this article. *State v. Graves*, 251 N.C. 550, 112 S.E.2d 85 (1960).

**Review by Federal Court Requires Exhaustion of State Remedies.**—Writs of habeas corpus will be refused review in a federal court when presented directly upon conviction in a North Carolina county court, as it is abundantly clear that until the petitioners have exhausted their State remedies, a federal court may not consider the constitutional questions presented. In *re Clayton*, 181 F. Supp. 834 (M.D.N.C. 1960).

**But Question Already Decided Need Not Be Urged on Supreme Court a Second Time under Alternate Procedure.**—Where the State Supreme Court reviewed State court convictions and squarely decided the questions raised, the State's opposition to federal relief on the ground that State rem-

edies were not exhausted because the prisoners did not proceed under this article was without merit, since if the question is presented and adjudicated by the State's highest court once, it is not necessary to urge it upon them a second time under an alternate procedure. *Grundler v. North Carolina*, 283 F.2d 798 (4th Cir. 1960).

**Applied in** *Hudson v. North Carolina*, 363 U.S. 697, 80 Sup. Ct. 1314, 4 L. Ed. 2d 1500 (1960); *State v. Burell*, 254 N.C. 317, 119 S.E.2d 3 (1961); *State v. Broadway*, 259 N.C. 243, 130 S.E.2d 337 (1963); *Bottoms v. State*, 262 N.C. 483, 137 S.E.2d 817 (1964); *Potter v. State*, 263 N.C. 114, 139 S.E.2d 4 (1964); *State v. Chamberlain*, 263 N.C. 406, 139 S.E.2d 620 (1965); *State v. Slade*, 264 N.C. 70, 140 S.E.2d 723 (1965); *State v. Benfield*, 264 N.C. 75, 140 S.E.2d 706 (1965); *State v. Lawrence*, 264 N.C. 220, 141 S.E.2d 264 (1965); *Ritchie v. North Carolina*, 220 F. Supp. 374 (W.D.N.C. 1963).

**Cited in** *State v. Burell*, 256 N.C. 288, 123 S.E.2d 795 (1962); *State v. Williams*, 261 N.C. 172, 134 S.E.2d 163 (1964); *Anderson v. North Carolina*, 221 F. Supp. 930 (W.D.N.C. 1963).

**§ 15-217.1. Filing petition with clerk; delivery of copy to solicitor; review of petition by judge.**—The proceeding shall be commenced by filing with the clerk of superior court of the county in which the conviction took place a petition, with two copies thereof, verified by affidavit. One copy shall be delivered by the clerk to the solicitor of the solicitorial district who prosecutes the criminal docket of the superior court of the county in which said petition is filed, either in person or by ordinary mail, and the clerk shall enter upon his docket the date and manner of delivery of such copy.

The clerk shall place the petition upon the criminal docket upon his receipt thereof. The clerk shall promptly after delivery of copy to the solicitor bring the petition, or a copy thereof, to the attention of the resident judge or any judge holding the courts of the district or any judge holding court in the county. Such judge shall review the petition and make such order as he deems appropriate with respect to permitting the petitioner to prosecute such action without providing for the payment of costs, with respect to the appointment of counsel, and with respect to the time and place of hearing upon the petition. If it appears to the judge that substantial injustice may be done by any delay in hearing upon the matters alleged in the petition, he may issue such order as may be appropriate to bring the petitioner before the court without delay, and may direct the solicitor to answer the petition at a time specified in the order, and the court shall thereupon inquire into the matters alleged as directed by the reviewing judge, as in the case of a writ of habeas corpus. If upon review of the petition it does not appear to the judge that an order advancing the hearing or other order is appropriate, he shall return the petition to the clerk with a notation to that effect. (1965, c. 352, s. 1.)

**Cross Reference.**—See note to § 15-217.

**In the county of conviction are to be found the records of the trial** which the prisoner attacks, as well as the court officials and other persons likely to have any

knowledge of the truth or falsity of the prisoner's allegations that he suffered a substantial denial of his constitutional rights. If entries in the minutes are to be corrected or judgments vacated, mani-

festly this should be done in the county where they are required to be kept. State v. Merritt, 264 N.C. 716, 142 S.E.2d 687 (1965).

**§ 15-218. Contents of petition; waiver of claims not alleged.**—The petition shall identify the proceeding or trial in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and shall clearly set forth the respects in which petitioner's constitutional rights were violated or in which he is illegally detained, and shall state that the questions raised have not heretofore been raised or passed upon by any court of competent jurisdiction. The petition shall have attached thereto affidavits, records or other evidence supporting its allegations or shall state why the same are not attached. The petition shall also identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. Argument and citations and discussion of authorities shall be omitted from the petition. Any claims of substantial denial of constitutional rights or of other error remediable under this article not raised or set forth in the original or any amended petition shall be deemed waived. (1951, c. 1083, s. 1; 1953, c. 675, s. 3; 1965, c. 352, s. 1.)

**Editor's Note.** — The 1965 amendment substituted "or in which he is illegally detained, and shall state" for "and" in the first sentence, deleted "constitutional" preceding "questions" in that sentence, inserted "or of other error remediable under

this article" in the last sentence and substituted "shall be deemed" for "is" near the end of that sentence.

**Applied in** State v. Cruse, 238 N.C. 53, 76 S.E.2d 320 (1953).

**§ 15-219. Petitioner unable to pay costs or procure counsel.**—If the petition alleges that the petitioner is without funds to pay the costs of the proceeding, and is unable to give a costs bond with sureties for the payment of the costs for the proceeding and is unable to furnish security for costs by means of a mortgage or lien upon property to secure the costs, the court may order that the petitioner be permitted to proceed to prosecute such proceeding without providing for the payment of costs. If the petitioner is without counsel and alleges in the petition that he is without means of any nature sufficient to procure counsel, he shall state whether or not he wishes counsel to be appointed to represent him. If appointment of counsel is so requested, the court shall appoint counsel if satisfied that the petitioner has no means sufficient to procure counsel. The court shall fix the compensation to be paid such counsel in accordance with the provisions of G.S. 15-5, which compensation shall be paid by the State as provided in said section. (1951, c. 1083, s. 1; 1963, c. 1180; 1965, c. 352, s. 1.)

**Editor's Note.** — The 1963 amendment substituted "in accordance with the provisions of G.S. 15-5, which compensation shall be paid by the State as provided in said section" for "which, when so determined, shall be paid by the county in which the conviction occurred" at the end of this section.

The 1965 amendment re-enacted the section without change.

**Petitioner was entitled to counsel at his**

post-conviction hearing. State v. Goff, 263 N.C. 515, 139 S.E.2d 695 (1965).

**And doubt as to technical sufficiency of petition should be resolved in defendant's favor** where he was not afforded counsel in post-conviction proceeding, despite the plain provision of this section. Perkins v. State, 234 F. Supp. 333 (W.D.N.C. 1964).

**Applied in** State v. Roux, 263 N.C. 149, 139 S.E.2d 189 (1964).

**§ 15-220. Answer of the State; withdrawal of petition; amendments.**—Unless the reviewing judge shall have ordered an earlier date, within 30 days after the date of delivery of the petition to the solicitor of the district, or within such further time as the court may fix, the solicitor shall answer or move to dismiss on behalf of the State. No other or further pleadings shall be filed except as the court may order on its own motion or on that of either party. The court may, in its discretion, grant leave at any stage of the proceeding prior to entry of judgment to withdraw the petition. Withdrawal of a petition shall constitute a waiver of any claim of denial of constitutional rights or of other error remediable



under this article which has been alleged in the petition. The court may, in its discretion make such orders as to amendment of the petition or any other pleading, or as to pleading over, or filing further pleadings, or extending the time for filing any pleading other than the original petition, as shall seem to the court appropriate, just and reasonable.

If it shall appear to the court that records, including a transcript of testimony, of the proceedings which resulted in the conviction of petitioner are necessary for a proper determination of the proceedings, the judge shall, upon finding that the petitioner is indigent or upon motion of the State, order the county to pay the necessary cost of obtaining the records specified by the judge. (1951, c. 1083, s. 1; 1965, c. 352, s. 1.)

**Editor's Note.** — The 1965 amendment substituted "Unless the reviewing judge shall have ordered an earlier date, within 30 days after the date of delivery of the petition to" for "Within 30 days after the date of the service of the petition upon"

at the beginning of the section, inserted the present fourth sentence and added the second paragraph in the section.

**Cited in** *State v. Hayes*, 261 N.C. 648, 135 S.E.2d 653 (1964).

**§ 15-221. Hearing.**—The court may receive proof by affidavits, depositions, oral testimony, or other evidence, and the court shall pass upon all issues or questions of fact arising in the proceeding without the aid of a jury. In its discretion, the court may order the petitioner brought before the court for the hearing. When said hearing is completed, the court shall make appropriate findings of fact, conclusions of law thereon and shall enter judgment upon said hearing. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings under which the petitioner was convicted, and such supplementary orders as to arraignment, retrial, custody, bail or discharge as may be necessary and proper. Such proceeding may be heard by any resident judge of the district or by any judge holding the courts of the district, or any judge holding court in the county, and such proceeding may be heard at term, in chambers or in vacation, or at any regular or special session of court. Unless the judge reviewing the petition has set another time, or unless a judge shall thereafter set another time, the clerk and the solicitor shall calendar the matter for hearing at the next session for the trial of criminal cases in the county after the time for pleading by the solicitor has expired. If said proceeding is set for hearing at any time other than a session of court for the trial of criminal cases in the county, then notice of the time and place of hearing shall be given to the solicitor of the district. (1951, c. 1083, s. 1; 1965, c. 352, s. 1.)

**Editor's Note.** — The 1965 amendment substituted "or by any judge holding the courts of the district, or any judge holding court in the county" for "or by any regular or special judge holding the courts of the district" in the fifth sentence, substituted "session" for "term" near the end of that sentence, inserted the present sixth sentence, substituted "a session of court for the trial of criminal cases in the county" for "a regular term of the court of the county in which the petition is filed" in the last sentence and substituted "given to" for "served upon" near the end of that sentence.

**When Case Remanded to Superior Court.**

—In the absence of sufficient and definite findings of fact by the court, as required by this section, the case should be remanded to the superior court to the end that the facts may be sufficiently and definitely found, that the reviewing court can move accurately and safely pass upon the conclusion of law. *State v. Burell*, 254 N.C. 317, 119 S.E.2d 3 (1961).

**Applied in** *Miller v. State*, 237 N.C. 29, 74 S.E.2d 513 (1953); *State v. Hackney*, 240 N.C. 230, 81 S.E.2d 778 (1954).

**Cited in** *State v. Hayes*, 261 N.C. 648, 135 S.E.2d 653 (1964).

**§ 15-222. Review by application for certiorari.** — Any final judgment entered upon such a petition and proceeding may be reviewed by the Supreme Court of North Carolina upon application for a writ of certiorari brought within 60 days from the entry of the judgment in such proceeding. The law of this State governing the application, granting and disposition of writs of certiorari shall be ap-

plicable to any application for writ of certiorari brought under the provisions of this article for the purpose of seeking a review of such judgment or proceeding. (1951, c. 1083, s. 1; 1965, c. 352, s. 1.)

**Editor's Note.** — The 1965 amendment re-enacted the section without change.

**Nature of Writ.**—A writ of certiorari is an extraordinary remedial writ, and it issues from a superior to an inferior court, officer, or commission acting judicially, and it lies only to review judicial or quasi-judicial action, to ascertain its validity and

to correct errors therein. *State v. Roux*, 263 N.C. 149, 139 S.E.2d 189 (1964).

**Applied** in *State v. Hackney*, 240 N.C. 230, 81 S.E.2d 778 (1954); *Bottoms v. State*, 262 N.C. 483, 137 S.E.2d 817 (1964).

**Cited** in *State v. Burell*, 256 N.C. 288, 123 S.E.2d 795 (1962); *State v. Hayes*, 261 N.C. 648, 135 S.E.2d 653 (1964).

## Chapter 16.

### Gaming Contracts and Futures.

#### Article 1.

##### Gaming Contracts.

Sec.

- 16-1. Gaming and betting contracts void.  
16-2. Players and betters competent witnesses.

#### Article 2.

##### Contracts for "Futures."

- 16-3. Certain contracts as to "futures" void.

Sec.

- 16-4. Entering into or aiding contract for "futures" misdemeanor.  
16-5. Opening office for sales of "futures" misdemeanor.  
16-6. Evidence in prosecutions under this article.

#### ARTICLE 1.

##### Gaming Contracts.

§ 16-1. **Gaming and betting contracts void.**—All wagers, bets or stakes made to depend upon any race, or upon any gaming by lot or chance, or upon any lot, chance, casualty or unknown or contingent event whatever, shall be unlawful; and all contracts, judgments, conveyances and assurances for and on account of any money or property, or thing in action, so wagered, bet or staked, or to repay, or to secure any money, or property, or thing in action, lent or advanced for the purpose of such wagering, betting, or staking as aforesaid, shall be void. (1810, c. 796, P. R.; R. C., c. 51, ss. 1, 2; Code, ss. 2841, 2842; Rev., s. 1687; C. S., s. 2142.)

**Cross Reference.**—As to criminal laws regarding gambling, see § 14-289 et seq.

**In General.** — A gaming contract or wager is a contract by which two parties or more agree that a certain sum of money or other thing shall be paid or delivered to one of them on the happening or not happening of an uncertain event. Bouv. Law Dict.

At common law all gambling contracts were void. And generally in this country, all wagering contracts are held to be illegal and void as against public policy. *Irwin v. Williar*, 110 U.S. 499, 4 Sup. Ct. 160, 28 L. Ed. 225 (1884).

**Liberal Construction.** — This section is construed liberally. *Turner v. Peacock*, 13 N.C. 303 (1830).

**Gambling contracts are void**, because they are so declared by this section. *Morehead Banking Co. v. Tate*, 122 N.C. 313, 30 S.E. 341 (1898).

**Judgments in Invitum Not Included.**—This section does not include judgments taken in invitum, but only such as are confessed or taken by consent. *Teague v. Perry*, 64 N.C. 39 (1870).

**No Recovery Where Game Fair.**—It is settled that money, or a horse, or a judgment, won at cards and actually paid and delivered, can not be recovered back, the game being fairly played. *Hodges v. Pitman*, 4 N.C. 276 (1816); *Hudspeth v.*

*Wilson*, 13 N.C. 372 (1830); *Warden v. Plummer*, 49 N.C. 524 (1857); *Teague v. Perry*, 64 N.C. 39 (1870).

**Unfair Gaming Always Illegal.**—Unfair gaming was not only illegal by force of the statute against gaming, but was unlawful at common law, so that the money, or thing won, if it had been paid, might be recovered back in an action at law. *Webb v. Fulchire*, 25 N.C. 485 (1843); *Warden v. Plummer*, 49 N.C. 524 (1857).

**Same—Recovery.** — Where a man is cheated out of his money, though it is in playing at a game forbidden by law, he may recover back what he has paid from the person who practiced the fraud upon him. *Webb v. Fulchire*, 25 N.C. 485 (1843).

**No Recovery on Bond Unfairly Won.**—Where A., at a game of cards unfairly played, won a justice's judgment from B., and took from the defendants in the judgment a bond payable to himself for the amount, on which he brought suit, to which the statute against gaming was pleaded, it was held that he could not recover. *Warden v. Plummer*, 49 N.C. 524 (1857).

**Subsequent Note Valid.**—A note given subsequently, in purchase of a magistrate's judgment which had been won at cards by the payee from the maker, is not void



under this section against gaming. *Teague v. Perry*, 64 N.C. 39 (1870).

**Rights of Innocent Holder of Gambling Note.**—This section applicable to a note originally given for a gambling debt, renders this and all notes and contracts in like cases void, this being true, no action thereon can be sustained. The position as stated is undoubtedly the law in this jurisdiction, and is in accord with well considered authorities elsewhere. This principle, however, is allowed to prevail only where the action is on the note to enforce its obligations, and does not affect or extend to suits by an innocent endorsee for value, and holder in due course, against the endorser on his contract of endorsement. *Wachovia Bank & Trust Co. v. Crafton*, 181 N.C. 404, 107 S.E. 316 (1921).

A note given for a gambling debt is void and no action thereon can be maintained. *Bullard v. Johnson*, 264 N.C. 371, 141 S.E.2d 472 (1965).

**Intent of Parties.**—Where the transaction is legitimate on its face, one party cannot avoid it by claiming that it was a gambling contract where the proof shows that the other party did not so understand it, but believed it to be a valid agreement. *Bibb v. Allen*, 149 U.S. 481, 13 Sup. Ct. 950, 37 L. Ed. 817 (1893).

**Money Loaned for Gaming.** — Money lent to play with at gaming, or to play at the time of loss, is not recoverable. *Moor-ing v. Stanton*, 1 N.C. 70 (1795).

**When Stakeholder Liable.** — Where money is deposited with a stakeholder, to be delivered to the winner, and the stakeholder pays over the money, after notice from the loser not to do so, the loser may recover the money from the stakeholder. *Wood v. Wood*, 7 N.C. 172 (1819); *Forrest v. Hart*, 7 N.C. 458 (1819).

**Note Given in Foreign State Unenforceable.**—A note given in consideration of a bet won on a horse race cannot be en-

forced in this State although given in a state where wagering contracts are not invalid. *Gooch v. Faucett*, 122 N.C. 270, 29 S.E. 362 (1898). See *Burrus v. Witcover*, 158 N.C. 384, 74 S.E. 11 (1912).

**Cards a Game of Chance.**—It is a matter of common knowledge that a game of cards is a game of chance. *State v. Taylor*, 111 N.C. 680, 16 S.E. 168 (1892).

**Betting on Horse Race.**—It was the intention of this section to make betting on horse races a criminal offense, since such wagering contracts had already been outlawed and the denouncement of the wager as unlawful came in by amendment at a later time. *State v. Brown*, 221 N.C. 301, 20 S.E.2d 286 (1942); *State v. Felton*, 239 N.C. 575, 80 S.E.2d 625 (1954).

**Betting on dog races under a pari-mutuel system** having no other purpose than that of providing the facilities by means of tickets, machines, etc., for placing bets, calculating odds, determining winnings, if any, constitutes gambling within the meaning of the statutes presently codified as §§ 16-1, 16-2 and 14-292. *State v. Carolina Racing Ass'n*, 241 N.C. 80, 84 S.E.2d 390 (1954).

**The game of tenpins** is not a "game of chance." *State v. Gupton*, 30 N.C. 271 (1848); *State v. King*, 113 N.C. 631, 18 S.E. 169 (1893).

**"Shuffleboard."**—The keeping of a gaming table called "a shuffleboard" is not indictable, as the game is not one of chance, but of skill. *State v. Bishop*, 30 N.C. 266 (1848).

**"Shooting for beef"** and other similar trials of skill, for which the participants pay for the "chance" or privilege of shooting, is not a game of chance there being no "chance" in the sense of the acts against gambling. *State v. DeBoy*, 117 N.C. 702, 23 S.E. 167 (1895).

**Cited in** *Moore v. Schwartz*, 195 N.C. 549, 142 S.E. 772 (1928).

**§ 16-2. Players and betters competent witnesses.** — No person shall be excused or incapacitated from confessing or testifying touching any money or property, or thing in action, so wagered, bet or staked, or lent for such purpose, by reason of his having won, played, bet or staked upon any game, lot or chance, casualty, or unknown or contingent event aforesaid; but the confession or testimony of such person shall not be used against him, in any criminal prosecution, on account of such betting, wagering or staking. (R. C., c. 51, s. 3; Code, s. 2843; Rev., s. 1688; C. S., s. 2143.)

**Cross References.**—As to rule of evidence generally that defendant is not compellable to testify, see § 8-54. As to exception with reference to testimony as to gambling, etc., see also § 8-55.

**Stated in** *State v. Brown*, 221 N.C. 301, 20 S.E.2d 286 (1942).

**Cited in** *State v. Felton*, 239 N.C. 575, 80 S.E.2d 625 (1954); *State v. Carolina Racing Ass'n*, 241 N.C. 80, 84 S.E.2d 390 (1954).

## ARTICLE 2.

*Contracts for "Futures."*

§ 16-3. **Certain contracts as to "futures" void.** — Every contract, whether in writing or not, whereby any person shall agree to sell and deliver any cotton, Indian corn, wheat, rye, oats, tobacco, meal, lard, bacon, salt pork, salt fish, beef, cattle, sugar, coffee, stocks, bonds, and choses in action, at a place and at a time specified and agreed upon therein, to any other person, whether the person to whom such article is so agreed to be sold and delivered shall be a party to such contract or not, when, in fact, and notwithstanding the terms expressed of such contract, it is not intended by the parties thereto that the articles or things so agreed to be sold and delivered shall be actually delivered, or the value thereof paid, but it is intended and understood by them that money or other thing of value shall be paid to the one party by the other, or to a third party, the party to whom such payment of money or other thing of value shall be made to depend, and the amount of such money or other thing of value so to be paid to depend upon whether the market price or value of the article so agreed to be sold and delivered is greater or less at the time and place so specified than the price stipulated to be paid and received for the articles so to be sold and delivered, and every contract commonly called "futures" as to the several articles and things hereinbefore specified, or any of them, by whatever other name called, and every contract as to the said several articles and things, or any of them, whereby the parties thereto contemplate and intend no real transaction as to the article or thing agreed to be delivered, but only the payment of a sum of money or other thing of value, such payment and the amount thereof and the person to whom the same is to be paid to depend on whether or not the market price or value is greater or less than the price so agreed to be paid for the said article or thing at the time and place specified in such contract, shall be utterly null and void; and no action shall be maintained in any court to enforce any such contract, whether the same was made in or out of the State, or partly in and partly out of this State, and whether made by the parties thereto by themselves or by or through their agents, immediately or mediately; nor shall any party to any such contract, or any agent of any such party, directly or remotely connected with any such contract in any way whatever, have or maintain any action or cause of action on account of any money or other thing of value paid or advanced or hypothecated by him or them in connection with or on account of such contract and agency; nor shall the courts of this State have any jurisdiction to entertain any suit or action brought upon a judgment based upon any such contract. This section shall not be construed so as to apply to any person, firm or corporation, or his or their agents, engaged in the business of manufacturing or wholesale merchandising in the purchase and/or sale of the necessary commodities required in the ordinary course of their business; nor shall this section be construed so as to apply to any contract with respect to the purchase and/or sale for future delivery of any of the articles or things mentioned and referred to in this section, where such purchase and/or sale is made on any exchange on which any such article or things are regularly bought and sold, or contracts therefor regularly entered into, and the rules and regulations of such exchange are such that either party to such contract may require delivery thereof: Provided, such contract is made in accordance with such rules and regulations. (1889, c. 221, s. 1; 1905, c. 538, s. 7; Rev., s. 1689; 1909, c. 853, s. 1; C. S., s. 2144; 1931, c. 236, s. 1.)

**Editor's Note.**—On examination of the original statute, it appears that the act, defining and declaring contracts in "futures" unlawful, was passed in 1889, chapter 221. In 1905, chapter 538, the legislature enacted a law to suppress what is known, in

popular phrase, as "bucket shops," and, having provided for this in §§ 1 and 2, the statute contains several additional sections relating to the statute of 1889 and all of them having reference to the mode or quantum of proof which should be re-

quired in enforcement of that act. The law of 1905 then, in its closing section, provided: "This act shall not be construed so as to apply to any person, firm, or corporation, etc." This is the first time these words appear in our legislation on this subject, and, so far as they had reference to the law of 1889, it is clear the legislature, in the original statutes, only intended that they should affect questions of proof. See *Rodgers, McCabe & Co., v. Bell*, 156 N.C. 378, 72 S.E. 817 (1911).

From these considerations, it seems clear that the last sentence of this section was inserted "unnecessarily and out of abundance of caution"—and it does not confer any exclusive right or privilege upon manufacturers or wholesale merchants; nor does it authorize them to engage in any business prohibited by the section. It simply provides that the courts shall not construe the section to have the effect of preventing them from buying and selling for future delivery the necessary commodities required in their ordinary business. See *State v. McGinnis*, 138 N.C. 724, 51 S.E. 50 (1905); *State v. Clayton*, 138 N.C. 732, 50 S.E. 866 (1905); *Rodgers, McCabe & Co. v. Bell*, 156 N.C. 378, 72 S.E. 817 (1911).

The 1931 act amended the "Bucket Shop Act" of 1889, now this section, so as to exempt contracts with respect to purchase or sale where they are made in accordance with the regulations of any exchange, and where the rules of the exchange permit either party to require delivery. It was intended to remove the ban of illegality from transactions on legitimate exchanges, as distinguished from "an establishment nominally for the transaction of a stock exchange business, or business of a similar character, but really for the registration of lots or wagers, usually for small amounts, on the rise or fall of stock, grain, etc., there being no transfer or delivery of the stocks or things dealt with." *Gatewood v. North Carolina*, 203 U.S. 531, 27 Sup. Ct. 167, 51 L. Ed. 305 (1906). See 9 N.C.L. Rev. 358.

**Section Constitutional.**—This section is in furtherance of our declared public policy, and is constitutional and valid. *Garseed v. Sternberger*, 135 N.C. 501, 47 S.E. 603 (1904); *State v. McGinnis*, 138 N.C. 724, 51 S.E. 50 (1905); *State v. Clayton*, 138 N.C. 732, 50 S.E. 866 (1905); *Rankin v. Mitchem*, 141 N.C. 277, 53 S.E. 854 (1906); *Randolph v. Heath*, 171 N.C. 383, 88 S.E. 731 (1916).

The legislature can, in the exercise of the police power, prescribe when and

under what circumstances and as to what offenses a certain act shall be prima facie evidence. Therefore, a provision that the purchase of commodities upon margin under certain circumstances shall raise a prima facie case that such purchases were void, and other circumstances shall not constitute such prima facie evidence, is not a discrimination forbidden by the Fourteenth Amendment. *State v. McGinnis*, 138 N.C. 724, 51 S.E. 50 (1905). This case was decided under what formerly constituted § 2145 of the Consolidated Statutes, which section was repealed by P.L. 1931, c. 236.

**Within Police Power.**—This section forbidding the business of running a "bucket shop," is clearly within the police power of the State. *State v. McGinnis*, 138 N.C. 724, 51 S.E. 50 (1905).

**Defines Illegal Contract.**—This section clearly defines what is an illegal contract where there is no real sale, but merely an agreement for an adjustment upon the basis of the differences in the prices of the commodity at the time fixed. *Orvis Bros. & Co. v. Holt-Morgan Mills*, 173 N.C. 231, 91 S.E. 948 (1917).

**Not Contrary to Federal Constitution.**—When, in an action pending in the courts of this State to recover on a judgment in a sister state, the legislature amended this section by adding thereto: "Nor shall the courts of this State have any jurisdiction to entertain any suit or action brought upon a judgment based upon any such contract," there can be no valid objection to such legislation on the ground that it impairs the obligation of contracts, and it would seem that no such objection can be made under Art. IV, §§ 1 and 2 of the federal Constitution, "the full faith and credit clause," if it is admitted or clearly appears that the judgment sued on was rendered on a transaction expressly forbidden by our statute on gaming, and that the question was not raised, investigated, or determined in the courts of the state in which the judgment was originally rendered. *Mottu v. Davis*, 151 N.C. 237, 65 S.E. 969 (1909).

The North Carolina statutes prohibiting gambling in futures and denying jurisdiction of the courts to suits on judgments based upon such contracts have been upheld as constituting an exception to the application of the full faith and credit clause of the Constitution, on the ground that the State had not provided a court with jurisdiction to entertain suit on such a judgment though properly rendered in another state. *Lockman v. Lockman*, 220 N.C. 95, 16 S.E.2d 670 (1941).



In an action on a judgment of the state of New York, defendant moved for leave to amend his answer to allege that the judgment was based on a gaming contract, and that therefore our court was without jurisdiction of the action. The trial court, in its discretion, denied the motion to amend, and, there being no valid defense set up in the answer as constituted, entered judgment on the pleadings. It was held that the denial of the motion to amend was affirmed, but the cause was remanded in order that the court find facts determinative of whether the question of the invalidity of the contract was concluded by the New York judgment, and if not, whether the contract constituting the basis of the judgment was one condemned by this section, since the court cannot render final judgment until it has determined the jurisdictional question. *Cody v. Hovey*, 219 N.C. 369, 14 S.E.2d 30 (1941).

**Example of "Margin."** — A payment made on account by a customer to a stockbroker, under an agreement between the customer and the stockbroker in which the stockbroker agreed either to sell or to buy from the customer a certain number of shares of stock, but under which, in fact, no delivery or transfer of shares was contemplated, is known in stockbroker's parlance as a "margin." *Welles & Co. v. Satterfield*, 190 N.C. 89, 129 S.E. 177 (1925); *McClain v. Fleshman*, 106 Fed. 880 (3d Cir. 1901). This case was decided under what formerly constituted § 2145 of the Consolidated Statutes which section was repealed by P.L. 1931, c. 236.

**Contract Made in Foreign State.** — An action upon a wagering or "future contract" in cotton cannot be maintained in this State, though entered into in another state where it is lawful. *Burrus v. Witcover*, 158 N.C. 384, 74 S.E. 11 (1912).

**Action upon judgment obtained in foreign state.** See *Cody v. Hovey*, 217 N.C. 407, 8 S.E.2d 479 (1940). For note on this case, see 18 N.C.L. Rev. 224.

**Bucket Shop.** — A "bucket shop" has been defined as "an establishment nominally for the transaction of a stock exchange business, or business of a similar character, but really for the registration of lots or wagers, usually for small amounts, on the rise or fall of stock, grain, etc., there being no transfer or delivery of the stocks or things dealt with." *Gatewood v. North Carolina*, 203 U.S. 531, 27 Sup. Ct. 167, 51 L. Ed. 305 (1906). For other definitions, see *State v. McGinnis*, 138 N.C. 724, 51 S.E. 50 (1905).

**Contracts for Future Delivery.** — It is

well settled that contracts for the future delivery of merchandise or tangible property are not void, whether such property is in existence in the hands of the seller, or to be subsequently acquired. *Bibb v. Allen*, 149 U.S. 481, 13 Sup. Ct. 950, 37 L. Ed. 817 (1893).

And the fact that it is the practice of persons making sales for future delivery to settle the same by setting off one sale against another, will not render it invalid. *Board v. Christie Grain, etc., Co.*, 198 U.S. 236, 25 Sup. Ct. 637, 49 L. Ed. 1031 (1905).

**Lawful Agreement.** — The 1931 amendment to this section made entirely lawful an "arrangement and agreement" between the plaintiffs and the defendant whereby the plaintiffs were to negotiate certain contracts for the sale of cotton on the New York Cotton Exchange for the defendant's account. *Marx v. Maddrey*, 94 F. Supp. 784 (E.D.N.C. 1951).

**Test of Validity under Section.** — The test of the validity of a contract for "future" which this section requires is the "intention not to actually deliver" the articles bought or sold for future delivery. No matter how explicit the words in any contract which may require a delivery, if in fact there is no intention to deliver, but the real understanding is that on the stipulated date the losing party shall pay to the other the difference between the market price and the contract price, this is a gambling contract. *State v. Clayton*, 138 N.C. 732, 50 S.E. 866 (1905); *Rodgers, McCabe & Co. v. Bell*, 156 N.C. 378, 72 S.E. 817 (1911).

When there is no real transaction, no real contract for purchase or sale, but only a wager upon the rise or fall of the price of stock, or an article of merchandise in the exchange or market, one party agreeing to pay, if there is a rise, and the other party agreeing to pay if there is a fall in price, the agreement is a pure wager. No business is done — nothing is bought or sold or contracted for, there is only a bet. *Orvis Bros. & Co. v. Holt-Morgan Mills*, 173 N.C. 231, 91 S.E. 948 (1917).

This section does not render void a contract for the purchase and sale of stocks on margin when actual delivery of the stocks is made to the purchaser or to his agent, and the stocks are paid for in whole or in part. *Cody v. Hovey*, 216 N.C. 391, 5 S.E.2d 165 (1939).

**Same—Intention of Parties.** — The true test of validity of a contract for future delivery is whether it can be settled only in money and in no other way, or whether

the party selling can tender and compel acceptance of the particular commodity sold or the party buying can compel the delivery of the commodity purchased. The essential inquiry in every case is as to the necessary effect of the contract and the real intention of the parties. *Williams v. Carr*, 80 N.C. 295 (1879); *State v. McGinnis*, 138 N.C. 724, 51 S.E. 50 (1905); *State v. Clayton*, 138 N.C. 732, 50 S.E. 866 (1905); *Welles & Co. v. Satterfield*, 190 N.C. 89, 129 S.E. 177 (1925).

The contract, by its terms, not disclosing any gambling element, the matter is to be settled by ascertaining the true underlying purpose of the parties. Was it in the intention of both parties that the cotton should not be delivered, and did they conceal in the deceptive terms of a fair and lawful contract, a gambling agreement, by which they contemplated no real transaction as to the article contracted to be delivered? *Rankin v. Mitchem*, 141 N.C. 277, 53 S.E. 854 (1906); *Burns v. Tomlinson*, 147 N.C. 645, 61 S.E. 614 (1908); *Edgerton & Son v. Edgerton & Bro.*, 153 N.C. 167, 69 S.E. 53 (1910); *Harvey & Son v. Pettaway*, 156 N.C. 375, 72 S.E. 364 (1911); *Rodgers, McCabe & Co. v. Bell*, 156 N.C. 378, 72 S.E. 817 (1911); *Hold v. Wellons*, 163 N.C. 124, 79 S.E. 450 (1913).

The intent of the parties that the merchandise contracted for should not be actually delivered is the cardinal element of a "futures" contract made illegal by this section and the courts will disregard the form and ascertain whether the intent of the parties was to speculate in the rise and fall of the price of the commodity. *Fenner v. Tucker*, 213 N.C. 419, 196 S.E. 357 (1938).

**Same—Same—Parol Evidence.** — This section rendering void and unenforceable in our courts a contract for the sale of futures upon margin covered by the purchaser, that does not contemplate the delivery of the thing bargained for, but only a payment to be made for the loss incurred or a profit to be received in accordance with the fall or rise of the market, looks to the substance of the contract and not to its form, and parol evidence is competent to show the intention of the parties entering therein. *Welles & Co. v. Satterfield*, 190 N.C. 89, 129 S.E. 177 (1925).

**Contracts to Which This Section Applies.**—Where the defendant has induced the plaintiff to purchase certain shares of stock, through himself, from his own broker, upon margin, the broker to carry the stock upon its hypothecation with him as

collateral, and thereafter the defendant has his broker, unknown to the plaintiff, to sell the stock and place the proceeds to his own account, and uses the same and other moneys upon margin advanced from time to time by the plaintiff upon his representation that the price of this stock had decreased, it was held, that the plaintiff may recover of the defendant in his action the moneys the defendant had thus converted to his own use; and this section, relating to gambling, etc., is not available to the defendant as a defense. *Gladstone v. Swain*, 187 N.C. 712, 122 S.E. 755 (1924).

A note given for margins upon an illegal contract for cotton futures, without intention of delivery of the cotton, cannot be collected by suit in our courts, and the promisor's repeated promise to pay it cannot impart any validity to it. *Garseed v. Sternberger*, 135 N.C. 501, 47 S.E. 603 (1904); *Burns v. Tomlinson*, 147 N.C. 645, 61 S.E. 614 (1908); *Burrus v. Witcover*, 158 N.C. 384, 74 S.E. 11, 39 L.R.A. (N.S.) 1005 (1912); *Cobb Bros. & Co. v. Guthrie*, 160 N.C. 313, 76 S.E. 81 (1912); *Orvis Bros. & Co. v. Holt-Morgan Mills*, 173 N.C. 231, 91 S.E. 948 (1917).

Where there is evidence that contracts set up by certain defendants in an action by the receiver of a brokerage business were founded upon speculation and based upon "margins," and that no actual delivery of the stock was intended by the parties, the evidence is sufficient to support a finding that the contracts were void under this section and the finding is as conclusive as the verdict of a jury, and the judgment that such contracts were absolutely void will be sustained. *Martin v. Bush*, 199 N.C. 93, 154 S.E. 43 (1930).

A contract for "cotton futures" in which no actual delivery is intended or contemplated is void and no action may be maintained thereon. *Bodie v. Horn*, 211 N.C. 397, 190 S.E. 236 (1937).

**Both Parties Must Have Intent.** — It was never held that when an innocent party had made a contract valid in its terms, his rights acquired thereunder should be denied him by reason of an undisclosed purpose or intent of the other. To avoid the contract the vitiating purpose or understanding must be shared in by both. *Rodgers, McCabe & Co. v. Bell*, 156 N.C. 378, 72 S.E. 817 (1911).

**Parties Included.**—The owner of a draft which he knows to have been given in the unlawful purchase of cotton futures, or in maintaining or purchasing margins in con-

tracts of that character, is a party to the prohibited contract, the consideration is illegal and he cannot recover from the payee in his action on the draft. *Burrus v. Witcover*, 158 N.C. 384, 74 S.E. 11 (1912).

**Subsequent Promise Void.** — A subsequent promise made by one of the contracting parties to the other to repay him for loss arising from a contract for "futures" is void. *Burns v. Tomlinson*, 147 N.C. 645, 61 S.E. 614 (1908).

**Unauthorized Act of Agent.** — A bona fide wholesale dealer who sues upon a contract for the future delivery of cotton, which is resisted on the ground that the contract was a wagering one and void under the provisions of this section, is bound by the acts and statements of his agents in negotiating and closing the trade, to the effect that actual delivery was not contemplated or required; and the plaintiff may not recover on the contract merely because he was a bona fide wholesale dealer in cotton and only authorized his agent to make a contract for actual delivery, if the agent at the time entered into a contract with the vendor which was condemned by the statute as being a wagering one. *Sprunt & Sons v. May*, 156 N.C. 388, 72 S.E. 821 (1911).

**Agent's Right to Recover.**—An agent for a principal to a contract made in violation of this section, as to "futures," cannot recover for any loss he may have sustained on account thereof, as such act of agency would be in violation of § 16-4, making it a misdemeanor. *Burns v. Tomlinson*, 147 N.C. 645, 61 S.E. 614 (1908).

If agents have no knowledge that it was the intention of their principals to enter into a wagering or gambling contract, they are entitled to recover, not only their commissions, but any sums of money which they have advanced to carry out purposes for their principals. *Embrey v. Jemison*, 131 U.S. 336, 9 Sup. Ct. 776, 33 L. Ed. 172 (1889).

**Burden of Proof.**—Where in an action by an assignee and trustees under § 23-1, et seq., it is alleged that one of the defendants was a partner in the business of the assignor and liable for the debts of the firm, and the other defendants admit this allegation and set up and seek to recover of the plaintiff and the alleged partner on contract with the assignor, the alleged partner is a defendant in the action on the contracts and her answer setting up the defense that the contracts were void under this section, as gambling contracts, places the burden on the other defendants to prove that the contracts were lawful.

*Martin v. Bush*, 199 N.C. 93, 154 S.E. 43 (1930).

When the defendant pleads in a verified answer that a contract, the subject of suit, for buying and selling cotton was void for being one for "futures," the burden of proof is upon the plaintiff to show that it was a lawful one, i.e., that actual delivery was intended by the parties, and not merely that either had the privilege of calling therefor. *Burns v. Tomlinson*, 147 N.C. 645, 61 S.E. 614 (1908). This case was decided under what formerly constituted § 2146 of the Consolidated Statutes, which section was repealed by P.L. 1931, c. 236.

**Burden Not upon Administrator.** — Where an administrator paid certain notes and it was later alleged by the legatees that the notes were given for a gambling contract which should not have been paid, it was held that former § 2146 did not apply so as to put the burden of proving that the notes were given for a valid contract upon the administrator. *Overman v. Lanier*, 157 N.C. 544, 73 S.E. 192 (1911). This case was decided under what formerly constituted § 2146 of the Consolidated Statutes, which section was repealed by P.L. 1931, c. 236.

**Evidence Sufficient.** — The purchaser makes out a prima facie case upon evidence that the contract was founded upon a gambling or wagering consideration in violation of this section. *Welles & Co. v. Satterfield*, 190 N.C. 89, 129 S.E. 177 (1925). This case was decided under what formerly constituted § 2145 of the Consolidated Statutes, which section was repealed by P.L. 1931, c. 236.

Where the plaintiff himself testified that he did not buy certain cotton in the ordinary course of his business as a cotton manufacturer for use in his mill, this was prima facie a "future contract." *Burns v. Tomlinson*, 147 N.C. 634, 61 S.E. 615 (1908). This case was decided under what formerly constituted § 2145 of the Consolidated Statutes, which section was repealed by P.L. 1931, c. 236.

**When Question for Jury.**—Where the contract is not a gambling one on its face the underlying purpose and intent of the parties should be left to the jury. *Harvey v. Pettaway*, 156 N.C. 375, 72 S.E. 364 (1911).

Upon conflicting evidence as to whether or not the contract is a gambling contract, it becomes a question for the jury under proper instructions from the court. *Welles & Co. v. Satterfield*, 190 N.C. 89, 129 S.E. 177 (1925). This case was decided under



what formerly constituted § 2146 of the Consolidated Statutes, which section was repealed by P.L. 1931, c. 236.

**Same—Example.** — Where there was evidence offered by the plaintiffs tending to show that they were wholesale dealers in cotton as a commodity, and that they purchased certain cotton as a commodity and sold it to manufacturers and exporters, and dealt in actual spot cotton and were in no wise dealers in futures, they were entitled to have this issue submitted to a jury. *Eure v. Sabiston*, 195 Fed. 721 (4th Cir. 1912).

**Judgment by Default Void.** — A judg-

ment rendered by default of an answer upon notes regular and valid upon their face, but growing out of transactions in cotton futures made void by this section which also declares that actions thereon may not be maintained in the courts of this State, will be set aside as utterly void, irrespective of whether it was obtained through excusable neglect, etc. *Randolph v. Heath*, 171 N.C. 383, 88 S.E. 731 (1916).

**Stated in** *Royster v. Hancock*, 235 N.C. 110, 69 S.E.2d 29 (1952).

**Cited in** *Meyer v. Fenner*, 196 N.C. 476, 146 S.E. 82 (1929).

#### § 16-4. Entering into or aiding contract for "futures" misdemeanor.

—If any person shall become a party to any contract declared void in this article; or if any person shall be the agent, directly or indirectly, of any party in making or furthering or effectuating the same; or if any agent or officer of a corporation shall in any manner knowingly aid in making or furthering any such contract to which the corporation is a party, he shall be guilty of a misdemeanor, and on conviction shall be fined not less than one hundred dollars nor more than five hundred dollars, and may be imprisoned in the discretion of the court.

If any person shall, while in this State, consent to become a party to any such contract made in another state, and if any person shall, as agent of any person or corporation, become a party to any such contract made in another state, or in this State do any act or in any way aid in the making or furthering of any such contract so made in another state, he shall be guilty of a misdemeanor, and on conviction shall be fined not less than fifty nor more than two hundred dollars, and may be imprisoned in the discretion of the court. (1889, c. 221, ss. 3, 4; Rev., ss. 3823, 3824; C. S., s. 2147.)

**This Section Is Constitutional.** — *Garseed v. Sternberger*, 135 N.C. 501, 47 S.E. 603 (1904); *State v. McGinnis*, 138 N.C. 724, 51 S.E. 50 (1905); *State v. Clayton*,

138 N.C. 732, 50 S.E. 866 (1905); *Rankin v. Mitchem*, 141 N.C. 277, 53 S.E. 854 (1906); *Randolph v. Heath*, 171 N.C. 383, 88 S.E. 731 (1916).

**§ 16-5. Opening office for sales of "futures" misdemeanor.**—If any person, corporation or other association of persons, either as principal or agent, shall establish or open an office or place of business in this State for the purpose of carrying on or engaging in making such contracts as are forbidden in this article, he shall be guilty of a misdemeanor, and shall on conviction be fined and imprisoned in the discretion of the court. (1905, c. 538, ss. 1, 2; Rev., s. 3825; C. S., s. 2148.)

**§ 16-6. Evidence in prosecutions under this article.**—No person shall be excused on any prosecution under the provisions of this article from testifying touching anything done by himself or others contrary to the provisions thereof, but no discovery made by the witness upon such examination shall be used against him in any penal or criminal prosecution, and he shall be altogether pardoned of the offense so done or participated in by him. In all such prosecutions proof that the defendant was a party to a contract, as agent or principal, to sell and deliver any article, thing or property specified or named in this article, or that he was the agent, directly or indirectly, of any party in making, furthering or effectuating the same, or that he was the agent or officer of any corporation or association or person in making, furthering or effectuating the same, and that the article, thing or property agreed to be sold and delivered was not actually delivered, and that settlement was made or agreed to be made upon the difference in value of

said article, thing or property, shall constitute against such defendant prima facie evidence of guilt. Proof that any person, corporation or other association of persons, either as principal or agent, has established an office or place where are posted or published from information received the fluctuating prices of grain, cotton, provisions, stocks, bonds and other commodities, or of any one or more of the same, shall constitute prima facie evidence of being guilty of violating the provisions of this article. (1905, ss. 3, 4, 5; Rev., s. 3826; C. S., s. 2149.)

## Chapter 17.

### Habeas Corpus.

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#### ARTICLE 1.

##### *Constitutional Provisions.*

§ 17-1. Remedy without delay for restraint of liberty.—Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness



thereof, and to remove the same, if unlawful; and such remedy ought not to be denied or delayed. (Const., art. 1, s. 18; Rev., s. 1819; C. S., s. 2203.)

**Cross References.** — As to costs in habeas corpus, see § 6-21, subdivision (3). As to exclusive remedy for challenging the validity of incarceration under sentence of death or imprisonment, see § 15-217.

**Editor's Note.**—"By the Habeas Corpus Act passed in 1679 the liberty of every Englishman was made as certain as law could make it; it being guaranteed to him that if accused of crime, he, instead of languishing in prison, as had often been the case, should be brought to a fair and speedy trial." Buckle, *History of Civilization in England*, Vol. I, p. 385.

"From the time of the Great Charter, the substantive law respecting the personal liberty of Englishmen had been nearly the same as at present; but it had been inefficacious for want of a stringent system of procedure. What was needed was not a new right but a prompt and searching remedy; and such a remedy the Habeas Corpus Act supplied." Macauley's *History of England*, Vol. I, Popular Edition, p. 122.

**Definition.**—The writ of habeas corpus is the remedy which the law gives for the enforcement of the civil right of personal liberty. In pursuance to its command, the body of the petitioner is brought before

the court, that it may inquire into the legality of his detention. *United States v. Ju Toy*, 198 U.S. 253, 25 Sup. Ct. 644, 49 L. Ed. 1040 (1905).

**Nature.**—The writ of habeas corpus is a high prerogative writ, known to the common law, similar in nature to the writs of quo warranto, mandamus, certiorari and prohibition, and the proceedings thereunder are regarded as appellate in character, but it cannot be made to perform the office of a writ of error on appeal. *Ex parte Virginia*, 100 U.S. 339, 25 L. Ed. 676 (1879).

The proceeding is, in its nature, civil rather than criminal, legal rather than equitable, appellate rather than original, collateral rather than direct, and summary rather than cumbersome. *Perrine v. Slack*, 164 U.S. 452, 17 Sup. Ct. 79, 41 L. Ed. 510 (1896).

**Object.**—The object of the proceeding by a writ of habeas corpus is to inquire into the legality of the detention of the petitioner. *United States v. McBratney*, 104 U.S. 621, 26 L. Ed. 869 (1881).

**Habeas corpus is high prerogative writ.** *In re Burton*, 257 N.C. 534, 126 S.E.2d 581 (1962).

**§ 17-2. Habeas corpus not to be suspended.** — The privileges of the writ of habeas corpus shall not be suspended. (Const., art. 1, s. 21; Rev., s. 1820; C. S., s. 2204.)

**Cross Reference.**—As to constitutional provision, see the North Carolina Constitution, Art. I, § 21.

**Cannot Be Abrogated.**—This section is an express provision, and there is no rule of construction or principle of constitutional law by which an express provision can be abrogated and made of no force by an implication from any other provision of the instrument. The clauses should be construed so as to give effect to each,

and prevent conflict. This is done by giving to Art. XII, § 3, the effect of allowing military possession of a county to be taken, and the arrest of all suspected persons to be made by military authority, but requiring, by force of Art. I, § 21, the persons arrested to be surrendered for trial to the civil authorities, on habeas corpus, should they not be delivered over without the writ. *Ex parte Moore*, 64 N.C. appx., 802 (1870).

## ARTICLE 2.

### *Application.*

**§ 17-3. Who may prosecute writ.** — Every person imprisoned or restrained of his liberty within this State, for any criminal or supposed criminal matter, or on any pretense whatsoever, except in cases specified in § 17-4, may prosecute a writ of habeas corpus, according to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint, and, if illegal, to be delivered therefrom. (1868-9, c. 116, s. 1; Code, s. 1623; Rev., s. 1821; C. S., s. 2205.)

**Who May Prosecute Writ.**—Any person imprisoned or restrained of his liberty for any pretense may prosecute a writ. *In re Burton*, 257 N.C. 534, 126 S.E.2d 581 (1962).

**Prisoner under Illegal Sentence.**—Where a defendant, charged with the crime of burglary with intent to commit murder, consented to a mistrial and pleaded "guilty of larceny," and was sentenced to imprisonment in the penitentiary, a writ of habeas corpus will issue, in order that he may be taken from the penitentiary and held to answer the charge in the court below. *State v. Queen*, 91 N.C. 659 (1884).

**Denial of Due Process of Law.**—A person convicted without due process of law may be discharged on habeas corpus. *In re Frederick*, 149 U.S. 70, 13 Sup. Ct. 793, 37 L. Ed. 653 (1893).

**Voluntary Custody.**—If the prisoner is in custody by his own voluntary act, the writ will not issue for his release. *McElvaine v. Brush*, 142 U.S. 155, 12 Sup. Ct. 156, 35 L. Ed. 971 (1891).

**Court Is Not Permitted to Act as One of Errors and Appeals.**—In habeas corpus proceedings, the court is not permitted to act as one of errors and appeals, but the right to afford relief, on such hearings, arises only when the petitioner is held unlawfully or on a sentence manifestly entered by the court without power to impose it. *In re Burton*, 257 N.C. 534, 126 S.E.2d 581 (1962).

Habeas corpus is not available as a substitute for appeal. *In re Burton*, 257 N.C. 534, 126 S.E.2d 581 (1962).

**The judgment must be void as distinguished from erroneous.** *In re Burton*, 257 N.C. 534, 126 S.E.2d 581 (1962); *Brown v. North Carolina*, 341 F.2d 87 (4th Cir. 1965).

**As Where Court Had No Jurisdiction or Judgment Was Not Authorized by Law.**—In habeas corpus proceedings, the court has jurisdiction to discharge petitioner only when the record discloses that the court which imprisoned him did not have jurisdiction of the offense or of the person of defendant, or that the judgment was not authorized by law. *In re Burton*, 257 N.C. 534, 126 S.E.2d 581 (1962).

Habeas corpus relief may be obtained only on determination that the court which

imprisoned the petitioner did not have jurisdiction of the offense or of the prisoner, or that judgment was not authorized by law. *Brown v. North Carolina*, 341 F.2d 87 (4th Cir. 1965).

**The sole question for determination at habeas corpus hearing for alleged unlawful imprisonment is whether petitioner is then being unlawfully restrained of his liberty.** *In re Burton*, 257 N.C. 534, 126 S.E.2d 581 (1962).

The only questions open to inquiry are whether on the record the court which imposed the sentence had jurisdiction of the matter or had exceeded its powers. *In re Burton*, 257 N.C. 534, 126 S.E.2d 581 (1962).

**Where one is actually confined in the State prison for a longer term of imprisonment than is legal, a writ of habeas corpus will issue to the end that a proper sentence may be imposed.** *State v. Green*, 85 N.C. 600 (1881).

There must be actual confinement, or the present means of enforcing it, in order to justify the issuance of the writ of habeas corpus and granting a release therefrom. *Wales v. Whitney*, 114 U.S. 564, 5 Sup. Ct. 1050, 29 L. Ed. 277 (1885).

**One Imprisoned for Contempt.**—Where a defendant punished for direct contempt contends that a legal right has been denied him, and it is made to appear that the court was without jurisdiction of the cause or power to impose the sentence, his remedy is by habeas corpus proceedings, taken to the Supreme Court, if necessary, by writ of certiorari. *State v. Little*, 175 N.C. 743, 94 S.E. 680 (1917).

**Relief of Soldier in Army.**—A soldier actually and rightfully in the army can have no relief by the writ of habeas corpus against any abuse of military authority, and if he be wrongfully held as a soldier he is not entitled to a habeas corpus while he is undergoing punishment or awaiting trial for a military offense. *Cox v. Gee*, 60 N.C. 516 (1864).

**Proceedings to obtain control of a minor child between persons with whom the child had been placed for adoption and welfare officers seeking to place the child with his family are not proceedings under this section, to set the infant free but is a proceeding to fix and determine the right of custody.** *In re Thompson*, 228 N.C. 74, 44 S.E.2d 475 (1947).

**§ 17-4. When application denied.** — Application to prosecute the writ shall be denied in the following cases:

- (1) Where the persons are committed or detained by virtue of process issued by a court of the United States, or a judge thereof, in cases where such

- courts or judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of suits in such courts.
- (2) Where persons are committed or detained by virtue of the final order, judgment or decree of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon such final order, judgment or decree.
  - (3) Where any person has willfully neglected, for the space of two whole terms after his imprisonment, to apply for the writ to the superior court of the county in which he may be imprisoned, such person shall not have a habeas corpus in vacation time for his enlargement.
  - (4) Where no probable ground for relief is shown in the application. (1868-9, c. 116, s. 2; Code, s. 1624; Rev., s. 1822; C. S., s. 2206.)

**In General.**—In construing this term, “final judgment or decree of a competent tribunal,” it has come to be well understood that the exception refers only to judgments warranted by the law applicable to the case in hand, and where it appears from an inspection of the record proper and the judgment itself that the court had no jurisdiction of the cause and was manifestly without power to enter the judgment or impose the sentence in question, in such case there would be no final sentence of a competent tribunal, and the exception established by the statute does not obtain. *State v. Queen*, 91 N.C. 659 (1884); *In re Holley*, 154 N.C. 163, 69 S.E. 872 (1910).

**Presumption of Validity.**—Proceedings before a court of competent jurisdiction will be presumed to be regular and valid, unless upon their face they plainly appear to be void; and when they do not so appear, they are not subject to review in habeas corpus proceedings. *State v. Burnette*, 173 N.C. 734, 91 S.E. 364 (1917).

**Meaning of “Competent Jurisdiction.”**—The term, “competent jurisdiction,” used by this section in making an exception to the power of this court to review a judgment in habeas corpus proceedings, means that where a committed criminal is detained under a sentence not authorized by law, he is entitled to be heard, and where, though authorized in kind, it extends beyond what the law expressly permits, he may be relieved from further punishment after serving the lawful portion of the sentence; and a different construction would render the statute unconstitutional. *In re Holley*, 154 N.C. 163, 69 S.E. 872 (1910).

**Cannot Be Used as Writ of Error.**—The writ of habeas corpus cannot be used in the nature of a writ of error. *State v. Dunn*, 159 N.C. 470, 74 S.E. 1014 (1912).

Habeas corpus is in the nature of a writ of error to the extent of examining into the legality of a person's detention,

but it is not available as a means of reviewing and correcting mere errors as distinguished from defects of jurisdiction. *State v. Edwards*, 192 N.C. 321, 135 S.E. 37 (1926); *In re Chase*, 193 N.C. 450, 137 S.E. 305 (1927).

The writ of habeas corpus may not be used as a substitute for appeal. *In re Smith*, 218 N.C. 462, 11 S.E.2d 317 (1940).

**Process by United States Judge.**—The petitioner in habeas corpus proceedings adjudged in contempt of court shall, under the provisions of this section, be remanded when upon the hearing it is made to appear that he is held in custody by virtue of a process issued by a court or judge of the United States where such judge or court has exclusive jurisdiction. *State v. Hooker*, 183 N.C. 763, 111 S.E. 351 (1922).

**Habeas corpus is inappropriate to test the validity of a trial which resulted in conviction and final judgment** against petitioner, both by reason of established procedure and also by this section. *In re Taylor*, 229 N.C. 297, 49 S.E.2d 749 (1948).

Where one is imprisoned under the final process of a court of competent jurisdiction the writ of habeas corpus may not successfully be sued out since this section expressly forbids it. *Ledford v. Emerson*, 143 N.C. 527, 55 S.E. 969 (1906); *In re Holley*, 154 N.C. 163, 69 S.E. 872 (1910); *Howie v. Spittle*, 156 N.C. 180, 72 S.E. 207 (1911).

In a proceeding wherein there was no question of the superior court having jurisdiction of the offense and of the person of the defendant, and the power to render the judgment imposed, the defendant was not entitled to relief by habeas corpus on the ground that the record failed to show that a verdict was rendered in the case or that he had entered any plea, since any omissions in the minutes of the court with respect to procedure followed during the course of trial could be amended by the



court. *State v. Cannon*, 244 N.C. 399, 94 S.E.2d 339 (1956).

**Same—Where Sentence Erroneous.**—The application must be refused, even where it appears that the applicant is imprisoned in the State's prison, and the sentence of the court is erroneous, and the applicant, in default of appeal, must be left to his remedy by writ of certiorari when he is detained by virtue of a final judgment of a court of competent jurisdiction. In *re Schenck*, 74 N.C. 607 (1876).

**Same—Reason for Rule.**—Without reference to the positive prohibition of this section, it is otherwise clear that the power cannot extend to cases where the person is confined on final process. For if so, this unseemly and discordant result would follow, that one superior court judge might try and sentence a person to death or the penitentiary, and another might issue the writ of habeas corpus and discharge the prisoner. Results so disgraceful and destructive to the orderly and harmonious administration of justice were never contemplated by the framers of our judicial system; on the contrary, they were carefully guarded against, both by the Constitution and legislation. In *re Schenck*, 74 N.C. 607 (1876).

**Prior Writ of Habeas Corpus.**—See In

§ 17-5. **By whom application is made.**—Application for the writ may be made either by the party for whose relief it is intended or by any person in his behalf. (1868-9, c. 116, s. 3; Code, s. 1625; Rev., s. 1823; C. S., s. 2207.)

**Application May Be Withdrawn.**—One who has petitioned for a writ of habeas corpus may withdraw his application

*re Adams*, 218 N.C. 379, 11 S.E.2d 163 (1940).

**Examples.**—Where the petitioner in habeas corpus proceedings directed to a superior court judge has previously been convicted in that court of an offense of which it had jurisdiction, and accordingly sentenced to imprisonment under a final order, the judgment imports verity, and evidence to collaterally impeach it is incompetent, and the application to prosecute the writ will be denied. In the *Matter of Croom*, 175 N.C. 455, 95 S.E. 903 (1918).

An indictment and judgment against the prisoner for an illegal sale of spirituous liquors alleged to have been based upon illegal evidence authorized by an unconstitutional statute, may not be passed upon in habeas corpus proceedings, for such would be to permit one superior court judge to examine into the proceedings before another judge, upon parol evidence, and review his action. *State v. Dunn*, 159 N.C. 470, 74 S.E. 1014 (1912).

**Applied in** *State v. Renfrow*, 247 N.C. 55, 100 S.E.2d 315 (1957).

**Quoted in** *In re Harris*, 241 N.C. 179, 84 S.E.2d 808 (1954).

whenever he chooses. *State v. Wiley*, 64 N.C. appx., 821 (1870).

§ 17-6. **To judge of Supreme or superior court; in writing.**—Application for the writ shall be made in writing, signed by the applicant—

- (1) To any one of the justices of the Supreme Court.
- (2) To any one of the superior court judges, either at term time or in vacation. (1868-9, c. 116, s. 4; Code, s. 1626; Rev., s. 1824; C. S., s. 2208.)

**Cross Reference.**—As to jurisdiction of special or emergency judges of the superior court, see §§ 7-52, 7-58.

**In General.**—The Constitution required the legislature to furnish an adequate remedy, and when it was declared that all such persons should have the right to "prosecute a writ of habeas corpus," it followed *ex vi termini*, that they were entitled to demand this remedy before any judge of any court of general jurisdiction in this country. The power of all judges to grant it was conceded before the Magna Charta, and was only reaffirmed, like many other cardinal principles, in that instrument and those

that followed reaffirming it. *Harkins v. Cathey*, 119 N.C. 649, 26 S.E. 136 (1896).

**Concurrent Jurisdiction in State and Federal Courts.**—On habeas corpus, the state courts have concurrent jurisdiction with the federal courts of all cases of imprisonment within their territorial jurisdiction, except in the case where the petitioner is in custody under the authority, or claim of authority, of the United States. *Robb v. Connolly*, 111 U.S. 624, 4 Sup. Ct. 544, 28 L. Ed. 542 (1884).

The federal and state courts have concurrent jurisdiction to inquire into the legality of detention under a governor's warrant in interstate extradition cases.

United States v. Jung Ah Lung, 124 U.S. 621, 8 Sup. Ct. 663, 31 L. Ed. 591 (1888).

**Source from Which Authority of State Judges Emanates.**—It is to be observed that the authority of the state judges in cases of habeas corpus emanates from the several states, and not from the United States. In order to destroy their jurisdiction, therefore, it is necessary to show, not that the United States has given them jurisdiction, but that Congress possesses and has exercised the power of taking away that jurisdiction which the states have vested in their own judges. In the Matter of Bryon, 60 N.C. 1 (1863).

**Jurisdiction of Courts.**—The courts of this State, as well as the individual judges, have jurisdiction to issue writs of habeas corpus, returnable to them in term time, and as a court. In the Matter of Bryon, 60 N.C. 1 (1863).

**Judges Mentioned Have Equal Powers.**—A single judge of the Supreme Court has the same and no other jurisdiction to issue the writ than a judge of the superior court, and the same limitation of power to issue the writ in certain cases extends equally to the two classes of judges. In re Schenck, 74 N.C. 607 (1876).

**Extent of Jurisdiction.** — The habeas corpus jurisdiction of every court, and of every judge, extends to every possible case of privation of liberty to the national Constitution, treaties and laws. In re Burrus, 136 U.S. 586, 10 Sup. Ct. 850, 34 L. Ed. 500 (1890).

**Obtaining Jurisdiction.** — Presenting a

petition to a judge for a writ of habeas corpus gives him jurisdiction of the subject. State v. Edney, 60 N.C. 463 (1864).

**Section 1-76 et seq. concerning venue** all refer to “actions” and have no application to habeas corpus proceedings. McEachern v. McEachern, 210 N.C. 98, 185 S.E. 684 (1936).

**Before Whom Writ Made Returnable.**—The judge issuing the writ may make it returnable before himself, or, for convenience, before any other judge. In re Burton, 257 N.C. 534, 126 S.E.2d 581 (1962).

The particular judge before whom the writ is returnable need not be either the resident or presiding judge of any particular term of court. In re Burton, 257 N.C. 534, 126 S.E.2d 581 (1962).

**Discretionary Power of Judge as to Place Writ Is Returnable Not Reviewed in Absence of Abuse.**—Since any judge of the superior court or justice of the Supreme Court has the power to issue a writ of habeas corpus at any time or any place, he has the discretionary power to make the writ returnable at such place as he may determine, which discretion will not be reviewed in the absence of a showing of abuse or failure to afford full opportunity to be heard, and therefore an exception to the refusal of a motion for change of venue of habeas corpus proceedings cannot be sustained. McEachern v. McEachern, 210 N.C. 98, 185 S.E. 684 (1936).

**§ 17-7. Contents of application.** — The application must state, in substance, as follows:

- (1) That the party, in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the place where, and the officer or person by whom he is imprisoned or restrained, naming both parties, if their names are known, or describing them if they are not known.
- (2) The cause or pretense of such imprisonment or restraint, according to the knowledge or belief of the applicant.
- (3) If the imprisonment is by virtue of any warrant or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused, or that for some sufficient reason a demand for such copy could not be made.
- (4) If the imprisonment or restraint is alleged to be illegal, the application must state in what the alleged illegality consists; and that the legality of the imprisonment or restraint has not been already adjudged, upon a prior writ of habeas corpus, to the knowledge or belief of the applicant.
- (5) The facts set forth in the application must be verified by the oath of the applicant, or by that of some other credible witness, which oath may be administered by any person authorized by law to take affidavits. (1868-9, c. 116, s. 5; Code, s. 1627; Rev., s. 1825; C. S., s. 2209.)

**Waiver of Errors.** — The parties may waive all errors and dispense with all forms in the proceedings on the petition. *State v. Edney*, 60 N.C. 463 (1864).

**Necessary Allegation.**—A petition for habeas corpus must allege that the imprisonment has not been already adjudged upon a prior writ of habeas corpus. *In the Matter of Brittain*, 93 N.C. 587 (1885).

§ 17-8. **Issuance of writ without application.**—When the Supreme or superior court, or any judge of either, has evidence from any judicial proceeding before such court or judge that any person within this State is illegally imprisoned or restrained of his liberty, it is the duty of said court or judge to issue a writ of habeas corpus for his relief, although no application be made for such writ. (1868-9, c. 116, s. 10; Code, s. 1632; Rev., s. 1826; C. S., s. 2210.)

**When Illegal Imprisonment Appears.**—If a case comes before the Supreme Court by appeal, or by certiorari, and upon the trial it appears that the prisoner was suffering an illegal confinement in the penitentiary, it would be the duty of that court, by virtue of its supervisory power,

**Where Other Remedies Exist.** — The writ of habeas corpus will be refused where the prisoner can be otherwise discharged. *In re Belt*, 159 U.S. 95, 15 Sup. Ct. 987, 40 L. Ed. 88 (1895).

**Prior Writ of Habeas Corpus.**—See *In re Adams*, 218 N.C. 379, 11 S.E.2d 163 (1940).

and of this section, enacted to carry into effect this constitutional power of the Supreme Court, to issue the writ of habeas corpus, even of its own motion, and discharge the prisoner. *In re Schenck*, 74 N.C. 607 (1876).

### ARTICLE 3.

#### *Writ.*

§ 17-9. **Writ granted without delay.**—Any court or judge empowered to grant the writ, to whom such applications may be presented, shall grant the writ without delay, unless it appear from the application itself or from the documents annexed that the person applying or for whose benefit it is intended is, by this chapter, prohibited from prosecuting the writ. (1868-9, c. 116, s. 6; Code, s. 1628; Rev., s. 1827; C. S., s. 2211.)

**Cross Reference.**—As to when application shall be denied, see § 17-4.

**Duty of Court to Issue.**—There can be no doubt of the duty and power of the

court to issue the writ of habeas corpus when applied for in accordance with statutory provisions. *In re Boyett*, 136 N.C. 415, 48 S.E. 789 (1904).

§ 17-10. **Penalty for refusal to grant.**—If any judge authorized by this chapter to grant writs of habeas corpus refuses to grant such writ when legally applied for, every such judge shall forfeit to the party aggrieved two thousand five hundred dollars. (1868-9, c. 116, s. 9; Code, s. 1631; Rev., s. 1828; C. S., s. 2212.)

**The writ of habeas corpus always issues when legally applied for**, because this section subjects a judge who refuses to entertain the petition to a penalty of \$2,500.

*In the Matter of Croom*, 175 N.C. 455, 95 S.E. 903 (1918).

**Cited in** *McEachern v. McEachern*, 210 N.C. 98, 185 S.E. 684 (1936).

§ 17-11. **Sufficiency of writ; defects of form immaterial.** — No writ of habeas corpus shall be disobeyed on account of any defect of form. It shall be sufficient—

- (1) If the person having the custody of the party imprisoned or restrained be designated either by his name of office, if he have any, or by his own name, or, if both such names be unknown or uncertain, he may be described by an assumed appellation, and anyone who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name, or description, or to another person.



- (2) If the person who is directed to be produced be designated by name, or if his name be uncertain or unknown, he may be described by an assumed appellation or in any other way, so as to designate the person intended. (1868-9, c. 116, ss. 7, 8; Code, ss. 1629, 1630; Rev., s. 1829; C. S., s. 2213.)

**§ 17-12. Service of writ.**—The writ of habeas corpus may be served by any qualified elector of this State thereto authorized by the court or judge allowing the same. It may be served by delivering the writ, or a copy thereof, to the person to whom it is directed; or, if such person cannot be found, by leaving it, or a copy, at the jail, or other place in which the party for whose relief it is intended is confined, with some under officer or other person of proper age; or, if none such can be found, or if the person attempting to serve the writ be refused admittance, by affixing a copy thereof in some conspicuous place on the outside, either of the dwelling house of the party to whom the writ is directed or of the place where the party is confined for whose relief it is sued out. (1868-9, c. 116, s. 32; Code, s. 1657; Rev., s. 1833; C. S., s. 2214.)

**To whom Issued.**—The writ should be issued to the person who has the immediate custody of the petitioner with the power to produce the body of such party

before the court or judge. *Wales v. Whitney*, 114 U.S. 564, 5 Sup. Ct. 1050, 29 L. Ed. 277 (1885).

#### ARTICLE 4.

##### *Return.*

**§ 17-13. When writ returnable.** — Writs of habeas corpus may be made returnable at a certain time, or forthwith, as the case may require. If the writ be returnable at a certain time, such return shall be made and the party shall be produced at the time and place specified therein. (1868-9, c. 116, s. 31; Code, s. 1656; Rev., s. 1830; C. S., s. 2215.)

**§ 17-14. Contents of return; verification.** — The person or officer on whom the writ is served must make a return thereto in writing, and, except where such person is a sworn public officer and makes his return in his official capacity, it must be verified by his oath. The return must state plainly and unequivocally—

- (1) Whether he has or has not the party in his custody or under his power or restraint.
- (2) If he has the party in his custody or power, or under his restraint, the authority and the cause of such imprisonment or restraint, setting forth the same at large.
- (3) If the party is detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return; and the original shall be produced and exhibited on the return of the writ to the court or judge before whom the same is returnable.
- (4) If the person or officer upon whom such writ is served has had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause and by what authority such transfer took place. (1868-9, c. 116, s. 11; Code, s. 1633; Rev., s. 1831; C. S., s. 2216.)

**§ 17-15. Production of body if required.** — If the writ requires it, the officer or person on whom the same has been served shall also produce the body of the party in his custody or power, according to the command of the writ, except in the case of the sickness of such party, as hereinafter provided. (1868-9, c. 116, s. 14; Code, s. 1636; Rev., s. 1832; C. S., s. 2217.)

## ARTICLE 5.

*Enforcement of Writ.*

**§ 17-16. Attachment for failure to obey.**—If the person or officer on whom any writ of habeas corpus has been duly served refuses or neglects to obey the same, by producing the body of the party named or described therein, and by making a full and explicit return thereto, within the time required, and no sufficient excuse is shown for such refusal or neglect, it is the duty of the court or judge before whom the writ has been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person or officer, directed to the sheriff of any county within this State, and commanding him forthwith to apprehend such person or officer and bring him immediately before such court or judge. On being so brought such person or officer shall be committed to close custody in the jail of the county where such court or judge may be, without being allowed the liberties thereof, until such person or officer make return to such writ and comply with any order that may be made by such court or judge in relation to the party for whose relief the writ has been issued. (1868-9, c. 116, s. 15; Code, s. 1637; Rev., s. 1834; C. S., s. 2218.)

**In General.**—The attachment warranted by this section does not rest on the idea of punishing for a contempt of the judge, or court, but of compelling a return to the writ and a production of a body. It is a substitute for the provision in the old Habeas Corpus Act, which punished the officer or person refusing or neglecting to make due return, "upon conviction by indictment," with a fine of \$500 for the first offense, and of \$1,000, and incapacity to hold office, for the second. *Ex parte Moore*, 64 N.C. appx., 802 (1870). See also *Ex parte Kerr*, 64 N.C. appx., 816 (1870).

**No Power to Arrest Governor.**—Under

the Habeas Corpus Act, a judge has no power to order the arrest of the Governor of the State. *Ex parte Moore*, 64 N.C. appx., 802 (1870).

**Excuse for Refusal to Make Return.**—Where a military officer detaining persons arrested in counties declared by the Governor to be in a state of insurrection, answered to a writ of habeas corpus, that he held them under the orders of the Governor, who had also ordered him not to obey the writ, it was held, that such return was a sufficient excuse, under this section, and, therefore, that such officer was not liable to be attached. *Ex parte Moore*, 64 N.C. appx., 802 (1870).

**§ 17-17. Liability of judge refusing attachment.**—If any judge willfully refuses to grant the writ of attachment, as provided for in § 17-16, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved twenty-five hundred dollars. (1870-1, c. 221, s. 2; Code, s. 1638; Rev., s. 1835; C. S., s. 2219.)

**§ 17-18. Attachment against sheriff to be directed to coroner; procedure.**—If a sheriff has neglected to return the writ agreeably to the command thereof, the attachment against him may be directed to the coroner or to any other person to be designated therein, who shall have power to execute the same, and such sheriff, upon being brought up, may be committed to the jail of any county other than his own. (1868-9, c. 116, s. 16; Code, s. 1639; Rev., s. 1836; C. S., s. 2220.)

**Cross Reference.**—As to requirement of coroner to act for sheriff in certain cases, see § 152-8.

**§ 17-19. Precept to bring up party detained.**—The court or judge by whom any such attachment may be issued may also at the same time, or afterwards, direct a precept to any sheriff, coroner, or other person to be designated therein, commanding him to bring forthwith before such court or judge the party, wherever to be found, for whose benefit the writ of habeas corpus has been granted. (1868-9, c. 116, s. 17; Code, s. 1640; Rev., s. 1837; C. S., s. 2221.)

**§ 17-20. Liability of judge refusing precept.**—If any judge refuses to grant the precept provided for in § 17-19, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved twenty-five hundred dollars. (1870-1, c. 221, s. 3; Code, s. 1641; Rev., s. 1838; C. S., s. 2222.)

**§ 17-21. Liability of judge conniving at insufficient return.** — If any judge grants the attachment, or the precept, and gives the officer or other person charged with the execution of the same verbal or written instructions not to execute the same, or to make any evasive or insufficient return, or any return other than that provided by law; or shall connive at the failing to make any return or any evasive or insufficient return, or any return other than that provided by law, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved twenty-five hundred dollars. (1870-1, c. 221, s. 4; Code, s. 1642; Rev., s. 1839; C. S., s. 2223.)

**§ 17-22. Power of county to aid service.**—In the execution of any such attachment, precept or writ, the sheriff, coroner, or other person to whom it may be directed, may call to his aid the power of the county, as in other cases. (1868-9, c. 116, s. 18; Code, s. 1643; Rev., s. 1840; C. S., s. 2224.)

**Editor's Note.**—The posse comitatus is discussed in *Worth v. Craven County Com'rs*, 118 N.C. 112, 24 S.E. 778 (1896). Means "Men of the County." — The power of the county, or "posse comitatus," means the men of the county in which the writ is to be executed. *Ex parte Moore*, 64 N.C. appx., 802 (1870).

**§ 17-23. Obedience to order of discharge compelled.**—Obedience to a judgment or order for the discharge of a prisoner or person restrained of his liberty, pursuant to the provisions of this chapter, may be enforced by the court or judge by attachment in the same manner and with the same effect as for a neglect to make return to a writ of habeas corpus; and the person found guilty of such disobedience shall forfeit to the party aggrieved two thousand five hundred dollars, besides any special damages which such party may have sustained. (1868-9, c. 116, s. 24; Code, s. 1649; Rev., s. 1841; C. S., s. 2225.)

**§ 17-24. No civil liability for obedience.** — No officer or other person shall be liable to any civil action for obeying a judgment or order of discharge upon writ of habeas corpus. (1868-9, c. 116, s. 25; Code, s. 1650; Rev., s. 1842; C. S., s. 2226.)

**§ 17-25. Recommittal after discharge; penalty.** — If any person shall knowingly again imprison or detain one who has been set at large upon any writ of habeas corpus, for the same cause, other than by the legal process or order of the court wherein he is bound by recognizance to appear, or of any other court having jurisdiction in the case, he shall be guilty of a misdemeanor. (1868-9, c. 116, s. 26; Code, s. 1651; Rev., s. 3581; C. S., s. 2227.)

**Cross Reference.**—See also § 17-38 and note.

**When Rearrest Valid.**—A party, set at large by writ of habeas corpus, upon the ground that the judgment of imprison-

ment was void for want of jurisdiction in the court, may be again arrested for the same cause upon legal process of a court having jurisdiction. *State v. Weather-spoon*, 88 N.C. 19 (1883).

**§ 17-26. Disobedience to writ or refusing copy of process; penalty.**—If any person to whom a writ of habeas corpus is directed shall neglect or refuse to make due return thereto, or to bring the body of the party detained according to the command of the writ without delay, or shall not, within six hours after demand made therefor, deliver a copy of the commitment or cause of detainer, such person shall, upon conviction on indictment, be fined one thousand dollars, or imprisoned not exceeding twelve months, and if such person be an officer, shall moreover be removed from office. (1868-9, c. 116, s. 27; Code, s. 1652; Rev., s. 3597; C. S., s. 2228.)



**§ 17-27. Penalty for false return.**—If any person shall make a false return to a writ of habeas corpus, he shall be guilty of a misdemeanor. (1868-9, c. 116, s. 28; Code, s. 1653; Rev., s. 3582; C. S., s. 2229.)

**§ 17-28. Penalty for concealing party entitled to writ.** — If any one having in his custody, or under his power, any party who, by law, would be entitled to a writ of habeas corpus, or for whose relief such writ shall have been issued, shall, with intent to elude the service of such writ, or to avoid the effect thereof, transfer the party to the custody, or put him under the power or control, of another, or shall conceal or change the place of his confinement, or shall knowingly aid or abet another in so doing, he shall be guilty of a misdemeanor. (1868-9, c. 116, ss. 29, 30; Code, ss. 1654, 1655; Rev., s. 3583; C. S., s. 2230.)

#### ARTICLE 6.

##### *Proceedings and Judgment.*

**§ 17-29. Notice to interested parties.**—When it appears from the return to the writ that the party named therein is in custody on any process, or by reason of any claim of right, under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge until it appears that the person so interested, or his attorney, if he have one, has had reasonable notice of the time and place at which such writ is returnable. (1868-9, c. 116, s. 12; 1870-1, c. 221, s. 1; Code, s. 1634; Rev., s. 1843; C. S., s. 2231.)

**§ 17-30. Notice to solicitor.**—When it appears from the return that such party is detained upon any criminal accusation, the court or judge may, if he thinks proper, make no order for the discharge of such party until sufficient notice of the time and place at which the writ has been returned, or is made returnable, is given to the solicitor of the district in which the person prosecuting the writ is detained. (1868-9, c. 116, s. 13; Code, s. 1635; Rev., s. 1844; C. S., s. 2232.)

**Hearing May Be Continued.**—If it appear from the return on a writ of habeas corpus that the petitioner is detained on a criminal charge, the court may continue the hearing for a reasonable time to give the solicitor an opportunity to examine into the case. *State v. Jones*, 113 N.C. 669, 18 S.E. 249 (1893).

**§ 17-31. Subpoenas to witnesses.**—Any party to a proceeding on a writ of habeas corpus may procure the attendance of witnesses at the hearing, by subpoena, to be issued by the clerk of any superior court, under the same rules, regulations and penalties prescribed by law in other cases. (1868-9, c. 116, s. 34; Code, s. 1659; Rev., s. 1845; C. S., s. 2233.)

**Cross Reference.** — As to issuance of subpoenas, see §§ 2-16, 8-59.

**§ 17-32. Proceedings on return; facts examined; summary hearing of issues.**—The court or judge before whom the party is brought on a writ of habeas corpus shall, immediately after the return thereof, examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same has been upon commitment for any criminal or supposed criminal matter or not; and if issue be taken upon the material facts in the return, or other facts are alleged to show that the imprisonment or detention is illegal, or that the party imprisoned is entitled to his discharge, the court or judge shall proceed, in a summary way, to hear the allegations and proofs on both sides, and to do what to justice appertains in delivering, bailing or remanding such party. (1868-9, c. 116, s. 19; Code, s. 1644; Rev., s. 1846; C. S., s. 2234.)

**Proceedings Must Be Summary.**—Proceedings under the writ of habeas corpus, which have for their principal object a release of a party from illegal restraint,

must necessarily be summary and prompt to be useful, and if an action could be arrested by an appeal, they would lose many of their most beneficial results. *State v. Miller*, 97 N.C. 451, 1 S.E. 776 (1887).

**Hearing Not Perfunctory.**—The words of the section preclude the idea that such hearing shall be perfunctory and merely formal. *In re Bailey*, 203 N.C. 362, 166 S.E. 165 (1932).

**Hearing Confined to Record.** — The hearing is confined to the record and judgment, and relief may be afforded only when on the record itself the judgment is one clearly and manifestly beyond the power of the court, a statement of the doctrine supported in numerous and authoritative decisions here and elsewhere. *In re Schenck*, 74 N.C. 607 (1876); *Ex parte McCown*, 139 N.C. 95, 51 S.E. 957 (1905); *In the Matter of Croom*, 175 N.C. 455, 95 S.E. 903 (1918); *In re Coy*, 127 U.S. 731, 8 Sup. Ct. 1263, 32 L. Ed. 274 (1888); *In re Swan*, 150 U.S. 637, 14 Sup. Ct. 225, 37 L. Ed. 1207 (1893).

**Same—Questions Open to Inquiry.** — Where the petitioner in habeas corpus proceedings is held under a final sentence of a court, a commitment of contempt or other, the only questions open to inquiry at the hearing are whether on the record the court had jurisdiction of the matter and whether on the facts disclosed in the record and under the law applicable to the case in hand, the court has exceeded its powers in imposing the sentence whereof the petitioner complains. *State v. Hooker*, 183 N.C. 763, 111 S.E. 351 (1922).

**Evidence Not Reviewable.** — As was held in *State v. Dunn*, 159 N.C. 470, 74 S.E. 1014 (1912), the Supreme Court cannot review the evidence or other matters in a criminal case in habeas corpus proceedings, but only the jurisdiction of the court and the validity of the judgment which is attacked. *State v. Burnette*, 173 N.C. 734, 91 S.E. 364 (1917).

**Question of Insanity Determined.** — When the petitioner in habeas corpus has been adjudged insane and her detention is ordered by a court of lunacy of another state, the judge of the superior court in this State by whom the proceedings of habeas corpus are heard should determine the validity of the order of the adjudication of insanity when the same is properly presented to him, and this is the determinative question involved, and upon failure to have done so the case will be remanded. *In re Chase*, 193 N.C. 450, 137 S.E. 305 (1927).

**Discretion of Judge.**—The quantum of evidence and the number of witnesses to be examined must necessarily be left also to the sound discretion of the judge who hears the writ, and his action in that regard cannot be reviewed. *State v. Herndon*, 107 N.C. 934, 12 S.E. 268 (1890). See also *In re Bailey*, 203 N.C. 362, 166 S.E. 165 (1932).

**Presumption of Innocence and Burden of Proof.**—The presumption of innocence applies only on a trial, and does not avail to furnish a presumption that the detention of a party on regular process, when the committing officer has jurisdiction, is illegal; therefore, where, upon the return of a sheriff to a writ of habeas corpus, it appeared that the petitioners were in custody on a mittimus, regular in every way, from a justice of the peace, for failure to give bond for their appearances at the next term of the superior court to answer a criminal charge of which the court had jurisdiction, the detention, nothing else appearing, was clearly legal, and the burden was upon the petitioner to show wherein it was illegal, and not upon the State to show that they were lawfully in custody. *State v. Jones*, 113 N.C. 669, 18 S.E. 249 (1893).

**No Appeal Lies.**—Appeal to the Supreme Court will not lie from the refusal of a superior court judge to discharge the defendant from custody in proceedings in habeas corpus, the remedy being by a petition for a writ of certiorari which is addressed to the sound discretion of the Supreme Court. *State v. Burnette*, 173 N.C. 734, 91 S.E. 364 (1917); *In the Matter of Croom*, 175 N.C. 455, 95 S.E. 903 (1918).

**Constitutional Provision.** — In habeas corpus proceedings wherein upon the hearing are involved questions of law or legal inference, and judgment is a denial of a legal right, it may be reviewed by the Supreme Court by virtue of the Constitution, Art. IV, § 8, under the power given to the court "to issue any remedial writs necessary to give it general supervision and control over the proceedings of inferior courts." *In re Holley*, 154 N.C. 163, 69 S.E. 872 (1910).

**Petitioner Serving Sentence under Void Judgment Is Entitled to Immediate Release.**—Where upon habeas corpus it appears that petitioner is serving a sentence under a void judgment, petitioner is entitled to his immediate release. *In re Burton*, 257 N.C. 534, 126 S.E.2d 581 (1962).

**Release of Person Committed to State**

**Mental Institution.** — A person committed to a State mental institution under chapter 122, art. 3, may not invoke the provisions of § 35-4 for a determination of the restoration of sanity by a jury trial as a condition precedent to his release under § 122 46.1. the proper remedy being by habeas corpus under this section. In re Harris, 241 N.C. 179, 84 S.E.2d 808 (1954).

**Writ of Certiorari Proper Remedy.** — Where it appears that, upon the return of the writ, the judge declined to hear evidence or investigate the charge, the writ of certiorari should issue. *Walton v. Gatlin*, 60 N.C. 310 (1864); *Ex parte Biggs*, 64 N.C. 202 (1870); *State v. Jefferson*, 66 N.C. 309 (1872); *State v. Herndon*, 107 N.C. 934, 12 S.E. 268 (1890).

The remedy given under the constitutional power conferred upon the Supreme Court to review a judgment in habeas corpus proceedings in matters not involving the care and custody of children, Constitution, Art. IV, § 8, shall only be exercised by certiorari. In re *Holley*, 154 N.C. 163, 69 S.E. 872 (1910).

**Same—When Denied.** — A petition for certiorari in the Supreme Court will be denied in habeas corpus proceedings when it appears therefrom that the prisoner is not entitled to his discharge. In the *Matter of Croom*, 175 N.C. 455, 95 S.E. 903 (1918).

If the judge, upon the investigation of the evidence on a petition for habeas

corpus, adjudges that there is or is not probable cause, and admits or refuses to admit to bail, no appeal or certiorari lies, either in favor of the State or the petitioner. *Walton v. Gatlin*, 60 N.C. 310 (1864); *State v. Miller*, 97 N.C. 451, 1 S.E. 776 (1887); *State v. Herndon*, 107 N.C. 934, 12 S.E. 268 (1890).

In habeas corpus proceedings, where it appears from the application for certiorari in the Supreme Court, or the documents annexed thereto, that the petition is determined under a final judgment of a competent tribunal, the writ will be denied in the Supreme Court. In re *Holley*, 154 N.C. 163, 69 S.E. 872 (1910).

**Proceeding Where Judgment Reversed.** — If, upon certiorari, the court reverses and sets aside the judgment of the court below, and the proceedings are remanded, no procedendo issues to any particular judge, but the petitioner can exercise his statutory right to apply, de novo, to any judge authorized to grant the writ of habeas corpus. *State v. Herndon*, 107 N.C. 934, 12 S.E. 268 (1890).

**Judicial Review of Questions of Law.** — In deciding questions which arise under writs of habeas corpus the judiciary may review and control the action of the Governor in regard to points of law; but cannot interfere with such action in regard to any matter within the discretion of the Governor. In the *Matter of Hughes*, 61 N.C. 57 (1867).

**§ 17-33. When party discharged.** — If no legal cause is shown for such imprisonment or restraint, or for the continuance thereof, the court or judge shall discharge the party from the custody or restraint under which he is held. But if it appears on the return to the writ that the party is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, such party can be discharged only in one of the following cases:

- (1) Where the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person.
- (2) Where, though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.
- (3) Where the process is defective in some matter of substance required by law, rendering such process void.
- (4) Where the process, though in proper form, has been issued in a case not allowed by law.
- (5) Where the person, having the custody of the party under such process, is not the person empowered by law to detain him.
- (6) Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law. (1868-9, c. 116, s. 20; Code, s. 1645; Rev., s. 1847; C. S., s. 2235.)

**Cross Reference.** — See also notes under § 17-32.

**Where Imprisonment for Contempt.** — It was held in *Ex parte Summers*, 27 N.

C. 149 (1844), that in a case of imprisonment for contempt, where the court states the facts upon which it proceeds, a reviewing tribunal may, on a habeas cor-



pus, discharge the party if it appears plainly that the facts do not amount to a contempt. *State v. Queen*, 91 N.C. 659 (1884).

**Sentence Partly Void.**—Where a prisoner is detained by virtue of a sentence in part valid and part otherwise, he may not be liberated on habeas corpus until he shall have served the valid portion of his sentence, and he shall be remanded when it appears that the time during which he may legally be detained has not expired. *State v. Hooker*, 183 N.C. 763, 111 S.E. 351 (1922).

**State Cannot Appeal.**—The State cannot appeal from an order in habeas corpus proceedings discharging from imprisonment one convicted of crime. Pro-

ceedings in habeas corpus, the object of which is to release a person from illegal restraint, must necessarily be summary to be useful, and if action could be arrested by an appeal upon the part of the State, the great writ of liberty would be deprived of its most beneficial results. *State v. Miller*, 97 N.C. 451, 1 S.E. 776 (1887); In the Matter of Williams, 149 N.C. 436, 63 S.E. 108 (1908).

**The recovery from a mental disease after commitment to an institution** would seem to be an "event which has taken place afterwards," within the meaning of subdivision (2) of this section, entitling an inmate to discharge under § 17-32. In *re Harris*, 241 N.C. 179, 84 S.E.2d 808 (1954).

**§ 17-34. When party remanded.** — It is the duty of the court or judge forthwith to remand the party, if it appears that he is detained in custody, either—

- (1) By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction.
- (2) By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree.
- (3) For any contempt specially and plainly charged in the commitment by some court, officer or body having authority to commit for the contempt so charged.
- (4) That the time during which such party may be legally detained has not expired. (1868-9, c. 116, s. 21; Code, s. 1646; Rev., s. 1848; C. S., s. 2236.)

**Cross Reference.**—See also § 17-4, when application for writ shall be denied.

**Judgment Imports Verity.**—A judgment in habeas corpus imports verity, and it

cannot be collaterally impeached. In the Matter of Croom, 175 N.C. 455, 95 S.E. 903 (1918).

**§ 17-35. When the party bailed or remanded.**—If it appears that the party has been legally committed for any criminal offense, or if it appears by the testimony offered with the return of the writ, or upon the hearing thereof, that the party is guilty of such an offense, although the commitment is irregular, the court or judge shall proceed to let such party to bail, if the case is bailable and good bail is offered; if not, the court or judge shall forthwith remand such party to the custody or place him under the restraint from which he was taken, if the person or officer, under whose custody or restraint he was, is legally entitled thereto; if not so entitled, the court or judge shall commit such party to the custody of the officer or person legally entitled thereto. (1868-9, c. 116, s. 22; Code, s. 1647; Rev., s. 1849; C. S., s. 2237.)

**Judge May Admit to Bail.**—Any person charged (but not convicted) of any crime whatever may be admitted on bail if the judge, upon hearing the testimony upon a writ of habeas corpus, adjudges that, upon the facts developed, the petitioner is entitled to be released on bail. *State v. Herndon*, 107 N.C. 934, 12 S.E. 268 (1890). And although a sentence is not valid the defendant may not be unconditionally released, as the court may hold

him to bail. *State v. Burnette*, 173 N.C. 734, 91 S.E. 364 (1917).

**No Discharge After Indictment.** — Of course, after indictment found, the judge cannot absolutely discharge the prisoner in any case, however clear a case of innocence may be made out, but must require his appearance at the next term of court. *State v. Herndon*, 107 N.C. 934, 12 S.E. 268 (1890).

**§ 17-36. Party held in execution not to be discharged.**—When a writ of habeas corpus cum causa issues and the sheriff or other officer to whom it is directed returns upon the same that the prisoner is condemned, by judgment given against him, and held in custody by virtue of an execution issued against him, the prisoner shall not be let to bail but shall be presently remanded, where he shall remain until discharged in due course of law. (2 Hen. V, c. 2; R. C., c. 31, s. 111; Code, s. 937; Rev., s. 1850; C. S., s. 2238.)

**§ 17-37. When party ill, cause determined in his absence.** — When, from the illness or infirmity of the person directed to be produced by a writ of habeas corpus, such person cannot, without danger, be brought before the court or judge where the writ is made returnable, the party in whose custody he is may state the fact in his return to the writ; and if the court or judge is satisfied of the truth of the allegation, and the return is otherwise sufficient, the court or judge shall proceed to decide on such return and to dispose of the matter in the same manner as if the body had been produced. (1868-9, c. 116, s. 23; Code, s. 1648; Rev., s. 1851; C. S., s. 2239.)

**§ 17-38. No second committal after discharge; penalty.** — No person who has been set at large upon any writ of habeas corpus shall be again imprisoned or detained for the same cause by any person whatsoever other than by the legal order or process of the court wherein he shall be bound by recognizance to appear or of any other court having jurisdiction in the case, under the penalty of two thousand five hundred dollars to the party aggrieved thereby. (1868-9, c. 116, s. 26; Code, s. 1651; Rev., s. 1852; C. S., s. 2240.)

**Cross Reference.** — As to recommittal after discharge, see § 17-25.

**Surrender by Sureties.**—Where the defendant was not originally liable to arrest and had been discharged upon habeas corpus, he cannot be held upon a surrender by his sureties. *Ledford v. Emerson*, 143 N.C. 527, 55 S.E. 969 (1906).

**When Rearrest Permissible.**—According to the express terms of this section, a party once discharged may be again arrested and imprisoned for the same cause, provided it be done by the legal order or process of a court of competent jurisdiction. *State v. Weatherspoon*, 88 N.C. 19 (1883).

## ARTICLE 7.

### *Habeas Corpus for Custody of Children in Certain Cases.*

**§ 17-39. Custody as between parents in certain cases; modification of order.**—When a contest shall arise on a writ of habeas corpus between any husband and wife, who are living in a state of separation, without being divorced, in respect to the custody of their children, the court or judge, on the return of such writ, may award the charge or custody of the child or children so brought before it either to the husband or to the wife, for such time, under such regulations and restrictions, and with such provisions and directions as will, in the opinion of such court or judge, best promote the interest and welfare of the children. At any time after the making of such orders the court or judge may, on good cause shown, annul, vary or modify the same; provided, that where the father is a nonresident of North Carolina and the custody of the child has been awarded, by an order of a court of this State, to the mother who is a resident of North Carolina, no motion on the part of such nonresident father may be heard or entertained by the court for a modification of the order of the court, unless such father has first shown under oath that, since the making of the original order, he has regularly contributed to the support of said child according to his means and according to the needs of the child, and, if said motion is heard and at said hearing such fact is not established to the satisfaction of the court, the motion for a modification of the order shall be denied, unless the court shall find that, at the time of said hearing the mother is not a fit and proper person

to have the custody of said child. Provided, that such proviso shall only apply after the case has been reopened on time. (1858-9, c. 53; 1868-9, c. 116, s. 36; Code, c. 1661; Rev., s. 1853; C. S., s. 2241; 1929, c. 270, s. 1.)

**Cross References.** — As to custody of children in divorce cases, see § 50-13 and note. As to persons entitled to custody of children in general, see § 33-2.

**Broad Powers Conferred.**—This section confers upon the court very large powers to "promote the interest and welfare of the children." *Holley v. Holley*, 96 N.C. 229, 1 S.E. 553 (1887); *Knott v. Taylor*, 96 N.C. 553, 2 S.E. 680 (1887); *Jones v. Cotten*, 108 N.C. 457, 13 S.E. 161 (1891).

**Proceeding Is Equitable.**—A proceeding under this section, involving custody of children, is, notwithstanding the fact that it is statutory, equitable, in view of the wide latitude given the court, the definite personal nature of the orders, and the fact that the welfare and rights of infants are involved. *In re Biggers*, 226 N.C. 647, 39 S.E.2d 805 (1946).

**When Section Applies.**—When, without being divorced, parents are living apart, the question concerning the disposition of their offspring must be decided under the provisions of this section. *In re Habeas Corpus of Jones*, 153 N.C. 312, 69 S.E. 217 (1910).

Habeas corpus to determine the right to the custody of a child applies only when the issue arises between husband and wife who are living in a state of separation without being divorced. *In the Matter of Blake*, 184 N.C. 278, 114 S.E. 294 (1922); *McEachern v. McEachern*, 210 N.C. 98, 185 S.E. 684 (1936); *In re Young*, 222 N.C. 708, 24 S.E.2d 539 (1943); *Robbins v. Robbins*, 229 N.C. 430, 50 S.E.2d 183 (1948). Such jurisdiction is ousted immediately upon the filing of the complaint in an action for divorce between the parties. *Phipps v. Vannoy*, 229 N.C. 629, 50 S.E.2d 906 (1948); *Weddington v. Weddington*, 243 N.C. 702, 92 S.E.2d 71 (1956).

It is manifest from a reading of this section, as interpreted and applied in decisions of the Supreme Court, that its provisions are available only in cases where the husband and wife are living in a state of separation, without being divorced, and there arises a contest between them as to the custody of their children. *In re McCormick*, 240 N.C. 468, 82 S.E.2d 406 (1954).

Where the relief primarily sought by plaintiff was a court order awarding her the legal custody of the children and providing for their future support, a habeas corpus proceeding was held to be available

to plaintiff. *Murphy v. Murphy*, 261 N.C. 95, 134 S.E.2d 148 (1964).

**Nature of Proceeding.** — While the proceeding under this section is referred to as "a habeas corpus" it seems clear that the legislature did not intend it to be "habeas corpus" in the strict meaning of the term. Rather it is set up as a proceeding in the nature of habeas corpus by which a controversy between husband and wife, living in a state of separation, without being divorced, in respect to the custody of their children may be determined. *In re McCormick*, 240 N.C. 468, 82 S.E.2d 406 (1954).

This section provides a proceeding in the nature of habeas corpus by which a controversy respecting the custody of minor children may be determined between husband and wife, living in a state of separation without divorce. *Bunn v. Bunn*, 258 N.C. 445, 128 S.E.2d 792 (1963).

**Except as between parents**, the right of custody of a child cannot be determined by writ of habeas corpus. *In re Parker*, 144 N.C. 170, 56 S.E. 878 (1907); *In re Young*, 222 N.C. 708, 24 S.E.2d 539 (1943).

**When Parents Divorced § 50-13 Applies.**

—When this section is considered in connection with § 50-13, it becomes apparent that the legislature intended that the custody of children shall be determined by the court in which the divorce was granted, and, where there is no divorce, by proceedings in habeas corpus. Jurisdiction of the court in which a divorce is granted to award the custody of a child is exclusive and continuing. *In the Matter of Blake*, 184 N.C. 278, 114 S.E. 294 (1922). See *McEachern v. McEachern*, 210 N.C. 98, 185 S.E. 684 (1936).

Where the parties have been divorced and the decree does not award the custody of the children, the procedure to determine the right to their custody, is by motion in the cause, and habeas corpus will not lie, and where in habeas corpus proceedings a decree for absolute divorce between the parties is introduced in the record without objection, but the court makes no finding as to whether the parties had been divorced, but awards the custody of the child to its mother, on appeal the case will be remanded for a finding as to whether the parties had been divorced. *In re Albertson*, 205 N.C. 742, 172 S.E. 411 (1934).

**A degree awarding custody under this section does not oust the jurisdiction of**



the court under § 50-13 to hear and determine a motion in the cause for the custody of the child in a subsequent divorce action between the parties. *Robbins v. Robbins*, 229 N.C. 430, 50 S.E.2d 183 (1948).

**Jurisdiction of Juvenile Court.** — In *Clegg v. Clegg*, 186 N.C. 28, 118 S.E. 824 (1923), it was held that the jurisdiction of the superior court or judge thereof in habeas corpus proceedings between husband and wife, living apart without divorce, where the custody of the minor children of their marriage is claimed by each of them, is not ousted or interfered with by the jurisdiction given by statute to the juvenile court. See *In the Matter of Blake*, 184 N.C. 278, 114 S.E. 294 (1922).

Original jurisdiction has been conferred upon the juvenile court, under § 110-21, to find a child delinquent or neglected, but the statute does not repeal this section, and is not inconsistent therewith. The superior court as such has exclusive jurisdiction, by writ of habeas corpus, to hear and determine the custody of children of parents separated but not divorced. In *re Prevatt*, 223 N.C. 833, 28 S.E.2d 564 (1944).

The juvenile court, under § 110-21, has exclusive original jurisdiction of a child under sixteen years of age "whose custody is subject to controversy" in all cases except those in which the superior court is given jurisdiction by this section or § 50-13. In *re Custody of Simpson*, 262 N.C. 206, 136 S.E.2d 647 (1964).

**Where Foreign Decree Invalid.**—When, under an invalid decree of divorce rendered in favor of the wife in another state, in which the custody of a child was awarded to the wife, it is sought by habeas corpus proceeding in this State to obtain the custody of the child domiciled with its father in this State, the proceeding will be regarded as one between husband and wife living in separation without being divorced. And the custody of the child rests in the sound discretion of the judge, subject to review, on appeal, upon the facts found. *Harris v. Harris*, 115 N.C. 587, 20 S.E. 187 (1894).

**Service of Process or General Appearance Required.**—In a habeas corpus proceeding, custody or support of children may not be determined until defendant has been served with process, personally or by publication, or has made a general appearance, and then only after time for answering has expired or after notice duly given. *Murphy v. Murphy*, 261 N.C. 95, 134 S.E.2d 148 (1964).

It is immaterial whether the respondent

or the petitioner has custody. Where there is a controversy between husband and wife, living in a state of separation, without being divorced, in respect to the custody of their children, the provisions of this section are available to the parent with whom the children then reside. In *re McCormick*, 240 N.C. 468, 82 S.E.2d 406 (1954).

**Custody of children may be determined out of term after notice.** In *re Burton*, 257 N.C. 534, 126 S.E.2d 581 (1962).

**Effect of Agreement between Parents.**—The inherent and statutory authority of the court to protect the interests and provide for the welfare of infants cannot be affected by agreement entered into by the child's parents. In *re Burton*, 257 N.C. 534, 126 S.E.2d 581 (1962).

**Parents Have Prima Facie Right to Custody.** — In habeas corpus proceedings for the possession of a nine-year old child, the parents of the child, who are living together as lawful man and wife, have prima facie the right to its control and custody. In *re Habeas Corpus of Jones*, 153 N.C. 312, 69 S.E. 217 (1910).

Where the father of an infant upon the death of its mother told the grandparents of the child that the latter should always remain with them, but subsequently desired the custody of the child and upon refusal brought habeas corpus proceedings, and it appeared that the father was of good moral character, industrious and kind and in every way fitted to care for and educate the child, the custody was properly awarded to him. *Latham v. Ellis*, 116 N.C. 30, 20 S.E. 1012 (1895).

**Same—Welfare of Child First Consideration.**—In habeas corpus for the custody of a child the welfare of the child is the first consideration but the father has a natural right of such custody. To lose this right it must be shown that he is not fit to exercise it. In *re Fain*, 172 N.C. 790, 90 S.E. 928 (1916).

The right of the parent is not absolute and yields to the welfare of the child when so required. In *re Hamilton*, 182 N.C. 44, 108 S.E. 385 (1921).

**Same — Same — Custody Awarded to Mother.** — The mother, in habeas corpus proceedings against her husband, may be allowed the superior claim when both are equally worthy and it is shown that the welfare of their children requires it. *Clegg v. Clegg*, 186 N.C. 28, 118 S.E. 824 (1923). In the opinion of this case, written by Justice Clarkson, there is a comprehensive and able discussion and review of the au-

thorities relating to the custody of children.

But the court will not award the custody of a child to a nonresident mother if it does not appear that the child desires to go to her or that the husband is not a proper person to have it, or that the child will be benefited by the change. *Harris v. Harris*, 115 N.C. 587, 20 S.E. 187 (1894).

**In the case of illegitimate children,** the same prima facie right of the parent to the custody of the offspring exists as in case of legitimacy, perhaps to a lesser degree, in the mother, where she evinces a capacity and disposition to properly care for her children. In *re Habeas Corpus of Jones*, 153 N.C. 312, 69 S.E. 217 (1910).

Habeas corpus will not lie at the instance of the father of an illegitimate child to obtain its custody and control from its mother. In *re McGraw*, 228 N.C. 46, 44 S.E.2d 349 (1947).

**Action by Father against Grandmother.**—Where the father of a child brings a writ of habeas corpus against the grandmother for the custody of the child but the contest is to all intents and purposes between the husband and wife for the custody of the child the writ comes within the spirit and letter of this section. In *re Ten Hoo- pen*, 202 N.C. 223, 162 S.E. 619 (1932).

**Controversy between Father and Maternal Grandparents.**—See *In re McGraw*, 228 N.C. 46, 44 S.E.2d 349 (1947).

**Same—Jurisdiction of Juvenile Court.**—It has been held that habeas corpus is not an appropriate writ to determine the custody of a child in a controversy between the father and the parents of his deceased wife, but that jurisdiction of such a case is vested exclusively in the juvenile court by § 110-21 (3). *Phipps v. Vannoy*, 229 N.C. 629, 50 S.E.2d 906 (1948). But see next following paragraph.

**Same—Effect of 1949 Amendment to § 50-13.**—It seems that the 1949 amendment to § 50-13 was intended to overrule *Phipps v. Vannoy*, 229 N.C. 629, 50 S.E.2d 906 (1948), insofar as it held that original jurisdiction was in the juvenile court under § 110-21 (3) to determine custody of a child as between the father and the child's maternal grandparents, when the mother had secured custody in the divorce action but subsequently died. The amendment provides that controversies not provided for in this section or elsewhere in § 50-13 may be determined in a special proceeding instituted by either of the parents, or by the surviving parent if the other be dead, in the superior court of the county wherein the petitioner, or the respondent or the

child is a resident at the time of filing the petition. 27 N.C.L. Rev. 452.

Under the 1949 amendment to § 50-13 either parent may institute a special proceeding to obtain custody of his or her child in cases not theretofore provided for by this section or § 50-13 and this amendment authorizes a special proceeding by the mother of an illegitimate child to obtain its custody from her aunt, with whom she had entrusted the child, and thus restricts the jurisdiction of the juvenile court in such instances. In *re Cranford*, 231 N.C. 91, 56 S.E.2d 35 (1949).

**Award Not Necessarily Final with Changed Conditions.**—An award in habeas corpus proceedings does not finally determine the rights of the parties to the custody of the child sought in habeas corpus proceedings; and where, in our courts, the award has been in favor of a nonresident mother against the father of the child, the courts, properly established and having jurisdiction at the domicile of the mother, may further hear and determine the matter touching the care and control of the child on such changed conditions, properly established, as would require it. In *re Means*, 176 N.C. 307, 97 S.E. 39 (1918).

**Habeas Corpus Not Available Where Divorce Is Granted in Another State Where Parents Resided.**—Habeas corpus is not available to determine the custody of a child as between its divorced parents and where the divorce is granted in another state of which the parents were residents, the writ is not available to enforce the provisions of the divorce decree relating to the custody of the child as against the mother moving to this State and bringing the child with her. In *re Ogden*, 211 N.C. 100, 189 S.E. 119 (1937).

**Effect of Failure to Give Notice.**—In a proceeding under this section, the failure to give statutory notice of the hearing, when a full hearing was had, was held not to invalidate an order with respect to care and custody. *Ridenhour v. Ridenhour*, 225 N.C. 508, 35 S.E.2d 617 (1945).

**Findings of Fact Are Conclusive When Based on Evidence.**—The findings of fact by the court in proceedings in habeas corpus, to determine the custody of minor children of the parties, are conclusive when based on evidence. *McEachern v. McEachern*, 210 N.C. 98, 185 S.E. 684 (1936).

**Modification of Earlier Order.**—In a proceeding under this section the contention that entry of an earlier order was res judicata and therefore court had no authority to modify order at subsequent

term without allegations or affidavits showing conditions had changed was without merit where earlier order specified that for change in conditions question of custody could be further heard and modification was based on finding of fact that there had been substantial change in circumstances of parties. *Ridenhour v. Ridenhour*, 225 N.C. 508, 35 S.E.2d 617 (1945).

**Judgment Based on Consent of Parties.**—When the jurisdiction of court is invoked, a judgment based on consent of parties is not a mere affirmation of a civil contract, but an order which carries with

it the sanctions of the jurisdiction invoked, and one of those sanctions is imprisonment for contempt of court. In *re Biggers*, 226 N.C. 647, 39 S.E.2d 805 (1946).

**Applied in** *In re Barwick*, 228 N.C. 113, 44 S.E.2d 599 (1947); *In re Biggers*, 228 N.C. 743, 47 S.E.2d 32 (1948); *In re Allen*, 238 N.C. 367, 77 S.E.2d 907 (1953).

**Cited in** *In re Gibson*, 222 N.C. 350, 23 S.E.2d 50 (1942); *Dellinger v. Bollinger*, 242 N.C. 696, 89 S.E.2d 592 (1955); *Blankenship v. Blankenship*, 256 N.C. 638, 124 S.E.2d 857 (1962).

**§ 17-39.1. Award of custody to such person, organization, etc., as will best promote welfare of child.**—In addition to the above mandatory section and other methods authorized by law for determining the custody of minor children, any superior court judge having authority to determine matters in chambers in the district may, in his discretion, issue a writ of habeas corpus requiring that the body of any minor child whose custody is in dispute be brought before him or any other qualified judge. Upon the return of said writ the judge may award the charge or custody of the child to such person, organization, agency or institution for such time, under such regulations and restrictions, and with such provisions and directions, as will, in the opinion of the judge, best promote the interest and welfare of said child. The cause may be retained for the purpose of varying, modifying or annulling any order for cause at any subsequent time. (1957, c. 545.)

**Cross Reference.**—See note to § 17-39.

**Editor's Note.**—For comment on this section, see 36 N.C.L. Rev. 52 (1957).

**Marital Status of Parents Is Not a Factor in Determining Procedure.**—Prior to 1957 habeas corpus could not be used to determine the right to custody of children whose parents had been divorced; but by this section, the marital status of parents is not now a factor in determining the procedure to obtain custody of a child, by habeas corpus. *Cleeland v. Cleeland*, 249 N.C. 16, 105 S.E.2d 114 (1958).

By virtue of this section, the marital status of parents is not now a factor in determining the procedure to obtain custody of a child. *Bunn v. Bunn*, 258 N.C. 445, 128 S.E.2d 792 (1963).

**Custody and Maintenance of Child Is Not Merely Incident of Divorce Proceedings.**—A superior court judge, by the express provisions of this section, had jurisdiction and power, after the return of the verdict in a divorce case, to determine matters relating to the custody and support of the minor son of the parties by issuing a writ of habeas corpus, apart from his jurisdiction of the divorce suit, so that custody and maintenance of such child is and was more than a mere incident of the divorce proceedings. *Bunn*

*v. Bunn*, 258 N.C. 445, 128 S.E.2d 792 (1963).

**Jurisdiction to Award Custody of Child after Denial of Divorce.**—After plaintiff's suit for divorce from bed and board and defendant's cross action for alimony without divorce had both been denied, the superior court judge had jurisdiction and power to enter the portion of the judgment awarding custody of the minor son of the parties to defendant and providing for his maintenance and support. *Bunn v. Bunn*, 258 N.C. 445, 128 S.E.2d 792 (1963).

**Duty to Support May Be Compelled.**—The language of this section, authorizing an award of custody, implies the power to compel the person responsible for the support of a child to perform his duty. In *re Skipper*, 261 N.C. 592, 135 S.E.2d 671 (1964).

**The pendency in another state of wife's suit for divorce and custody and support of the children of the marriage does not deprive the courts of this State of jurisdiction in habeas corpus proceedings against the resident husband to determine the right to custody, the children, constituting the res, being within the State.** In *re Skipper*, 261 N.C. 592, 135 S.E.2d 671 (1964).



**Propriety of Award Where Evidence Shows Both Parents Suitable.**—Where the evidence is sufficient to support the court's finding that petitioner is a suitable person to have custody of his son and that the best interests of the child would be served by awarding the child's custody to him, order awarding the custody to the father is proper, even though the evidence would also support a finding that the child's

mother is a fit and suitable person and that the best interests of the child would be served by awarding custody to her. *In re White*, 262 N.C. 737, 138 S.E.2d 516 (1964).

**Applied in** *Spitzer v. Lewark*, 259 N.C. 49, 129 S.E.2d 620 (1963).

**Cited in** *Blankenship v. Blankenship*, 256 N.C. 638, 124 S.E.2d 857 (1962).

**§ 17-40. Appeal to Supreme Court.** — In all cases of habeas corpus, where a contest arises in respect to the custody of minor children, either party may appeal to the Supreme Court from the final judgment. (1858-9, c. 53, s. 2; Code, s. 1662; Rev., s. 1854; C. S., s. 2242.)

**No Appeal Except under This Section.**—There is no provision for appeal from a judgment in habeas corpus proceedings, except in cases concerning the care and custody of children under this section. *In re Holley*, 154 N.C. 163, 69 S.E. 872 (1910); *State v. Renfrow*, 247 N.C. 55, 100 S.E.2d 315 (1957).

It is a significant indication of the legislative intent in giving an appeal in this case only, not to recognize it in other cases. *State v. Miller*, 97 N.C. 451, 1 S.E. 776 (1887).

**Death of Party Pending Appeal.** — Where in a habeas corpus proceeding brought to secure the custody of infant children, the respondent (in whose favor judgment had been rendered below) died pending appeal, it was held, that the proceeding abated, and could not be revived against the personal representative. *Brown v. Rainor*, 108 N.C. 204, 12 S.E. 1028 (1891).

**Judgment of Superior Court Stayed Pending Appeal.** — Upon appeal to the Supreme Court from an order of the judge of the superior court in habeas corpus proceedings between husband and wife for the custody of the minor children of the marriage upon petition of the wife, living by mutual consent separated from her husband, without divorce, it is within the power of the Supreme Court, upon notification to the adverse party to appear before one of the justices, and after a regular hearing, for the justice to allow a supersedeas bond in a fixed amount, to stay the judgment of the lower court pending appeal, and by consent to set the hearing after the call of a certain district in the Supreme Court in term. *Clegg v. Clegg*, 186 N.C. 28, 118 S.E. 824 (1923).

**Discretion in Supreme Court.** — When the superior court judge has entered judgment in habeas corpus proceedings between husband and wife, and has found the facts upon which his judgment was based, and both parties appeal, the Supreme Court, in its sound legal discretion, may review the judgment and affirm, reverse, or modify it. *Atkinson v. Downing*, 175 N.C. 244, 95 S.E. 487 (1918); *Clegg v. Clegg*, 186 N.C. 28, 118 S.E. 824 (1923).

**What Reviewed.**—Upon an appeal from a judgment upon a writ of habeas corpus awarding the custody of a minor child, the court will only review errors of "law or legal inference," Constitution, Art. IV, § 8, and not the findings of fact made by the lower court upon competent evidence; and this section allowing an appeal in such cases, does not affect the matter. *Stokes v. Cogdell*, 153 N.C. 181, 69 S.E. 65 (1910).

**Decree as between Divorced Parents Is Not Appealable.**—A decree in habeas corpus proceedings to determine the custody of a child as between its divorced parents is not appealable, since the proceeding does not come within the provisions of this and § 17-39, nor will the provisions made for the child be considered when the judge below finds that the child is in school and is being properly cared for by the parent having its custody, and awards its custody to such parent during the school term, the sole remedy being by certiorari to invoke the constitutional power of the Supreme Court to supervise and control proceedings of inferior courts. *In re Ogden*, 211 N.C. 100, 189 S.E. 119 (1937).

**Applied in** *In re Albertson*, 205 N.C. 742, 172 S.E. 411 (1934).

## ARTICLE 8.

*Habeas Corpus Ad Testificandum.*

§ 17-41. **Authority to issue the writ.**—Every court of record has power, upon the application of any party to any suit or proceeding, civil or criminal, pending in such court, to issue a writ of habeas corpus, for the purpose of bringing before the said court any prisoner who may be detained in any jail or prison within the State, for any cause, except a prisoner under sentence for a capital felony, to be examined as a witness in such suit or proceeding in behalf of the party making the application.

Such writ of habeas corpus may be issued by any justice of the peace or clerk of the superior court, upon application as provided in this section, to bring any person confined in the jail or prison of the same county where such justice or clerk may reside, to be examined as a witness before such justice or clerk.

In cases where the testimony of any prisoner is needed in a proceeding before a justice of the peace, or a clerk, and such person is confined in a county in which such justice or clerk does not reside, application for habeas corpus to testify may be made to any judge of the Supreme or superior court. (1868-9, c. 116, ss. 37, 38; Code, ss. 1663, 1664; Rev., ss. 1855, 1856; C. S., s. 2243.)

**An Inherent Power.** — The right to bring a person, whose presence is necessary, before a court for the exercise of its powers is inherent in every court of general jurisdiction, and its exercise is essential to the preservation of its power and dignity. *State v. Haskins*, 77 N.C. 530 (1877); *Harkins v. Cathey*, 119 N.C. 649, 26 S.E. 136 (1896).

**No Application to State.**—This section applies only to parties strictly so called, and not to the State. *Ex parte Harris*, 73 N.C. 65 (1875), citing *State v. Adair*, 68 N.C. 68 (1873).

**Murderer Is Competent Witness.**—One who has been convicted of murder, and is under sentence of death, is a competent witness; and the solicitor for the State is

entitled to a habeas corpus to bring such condemned prisoner into court for the purpose of testifying before the grand jury. *Ex parte Harris*, 73 N.C. 65 (1875).

**Same — Objection Untenable.** — When the State has procured the attendance of a witness under sentence of death, the objection by the defendant that he could not be procured by writ of habeas corpus ad testificandum under this section, is untenable, this not applying to the State; nor will objection avail that the time set for the execution had passed, and the witness, being dead, in the eye of the law, could not testify, the witness having been present and having testified. *State v. Jones*, 176 N.C. 702, 97 S.E. 32 (1918).

§ 17-42. **Contents of application.**—The application for the writ shall be made by the party to the suit or proceeding in which the writ is required, or by his agent or attorney. It must be verified by the applicant; and shall state—

- (1) The title and nature of the suit or proceeding in regard to which the testimony of such prisoner is desired.
- (2) That the testimony of such prisoner is material and necessary to such party on the trial or hearing of such suit or proceeding, as he is advised by counsel and verily believes. (1868-9, c. 116, s. 39; Code, s. 1665; Rev., s. 1857; C. S., s. 2244.)

§ 17-43. **Service of writ.**—The writ of habeas corpus to testify shall be served by the same person, and in like manner in all respects, and enforced by the court or officer issuing the same as prescribed in this chapter for the service and enforcement of the writ of habeas corpus cum causa. (1868-9, c. 116, s. 40; Code, s. 1666; Rev., s. 1858; C. S., s. 2245.)

**Cross Reference.**—As to service of writ in habeas corpus proceedings, see § 17-12.

§ 17-44. **Applicant to pay expenses and give bond to return.** — The service of the writ shall not be complete, however, unless the applicant for the same tenders to the person in whose custody the prisoner may be, if such person

is a sheriff, coroner, constable or marshal, the fees and expenses allowed by law for bringing such prisoner, nor unless he also gives bond, with sufficient security, to such sheriff, coroner, constable or marshal, as the case may be, conditioned that such applicant will pay the charges of carrying back such prisoner. (1868-9, c. 116, s. 41; Code, s. 1667; Rev., s. 1859; C. S., s. 2246.)

**§ 17-45. Duty of officer to whom writ delivered or on whom served.**

—It is the duty of the officer to whom the writ is delivered or upon whom it is served, whether such writ is directed to him or not, upon payment or tender of the charges allowed by law, and the delivery or tender of the bond herein prescribed, to obey and return such writ according to the exigency thereof upon pain, on refusal or neglect, to forfeit to the party on whose application the same has been issued the sum of five hundred dollars. (1868-9, c. 116, s. 42; Code, s. 1668; Rev., s. 1860; C. S., s. 2247.)

**§ 17-46. Prisoner to be remanded.**—After having testified, the prisoner shall be remanded to the prison from which he was taken. (1868-9, c. 116, s. 43; Code, s. 1669; Rev., s. 1861; C. S., s. 2248.)



## Chapter 18.

### Regulation of Intoxicating Liquors.

#### Article 1.

##### The Turlington Act.

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- 18-1. Definitions; application of article.
- 18-2. Manufacture, sale, etc., forbidden; construction of law; nonbeverage liquor.
- 18-3. Advertisements, signs, and billboards.
- 18-4. Advertising, etc., of utensils, etc., for use in manufacturing liquor.
- 18-5. Soliciting orders for liquor.
- 18-6. Seizure of liquor, equipment and materials, or conveyance; arrests; sale of property.
- 18-6.1. Officers to refer to State courts cases involving vehicles or equipment or material seized and arrests made for unlawful transportation.
- 18-7. Use of seized property forbidden.
- 18-8. Witnesses; self crimination; immunity.
- 18-9. Place of sale and delivery; place of prosecution.
- 18-10. Uniting separate offenses in indictment, etc.; bill of particulars; trial.
- 18-11. Possession prima facie evidence of keeping for sale.
- 18-12. Summons on citizens having interest in property.
- 18-13. Search warrants; disposal of liquor, equipment and materials seized.
- 18-14. Grand jury, witnesses before; effect of evidence.
- 18-15. Clubrooms and other places for keeping, etc., of liquor.
- 18-16. Records of transportation companies; evidence.
- 18-17. Indictments; allegations of sale; circumstantial evidence.
- 18-18. Serving liquor with meals.
- 18-19. Sale by druggists or pharmacists.
- 18-20. Grain alcohol for use in medicine or surgery; manufacture or sale of cider.
- 18-21. Wine for sacramental purposes.
- 18-22. Sheriffs and police to search for and seize distilleries; confiscation; disposal of property.
- 18-23. Destruction of liquor at distillery; persons arrested.
- 18-24. Laches of officers; removal from office.
- 18-25. Rewards for seizure of still.
- 18-26. Same—In certain counties.

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- 18-27. Officers given power to compel evidence; effect of evidence; process; immunity to witnesses.
- 18-28. Distilling or manufacturing liquor; first offense misdemeanor.
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- 18-30. Laws repealed; local laws.

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##### Miscellaneous Regulations.

- 18-31. Unlawful sale through agents.
- 18-32. Keeping liquor for sale; evidence.
- 18-33. Unlawful to handle draft connected with receipt for liquor.
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- 18-35. Federal license as evidence.
- 18-35.1. Unlawful to obtain, possess, etc., federal license to manufacture, purchase or handle intoxicating liquor.

#### Article 3.

##### Alcoholic Beverage Control Act of 1937.

- 18-36. Purposes of article.
- 18-37. State Board of Alcoholic Control created; membership; appointed by Governor; chairman; terms; compensation; meetings.
- 18-38. Director of State Board of Alcoholic Control.
- 18-39. Powers and authority of Board.
- 18-39.1. Special peace officers; Board authorized to commission employees; no additional compensation.
- 18-39.2. Same; powers and jurisdiction.
- 18-39.3. Same; bonds.
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- 18-40. Removal of member by Governor; vacancy appointments.
- 18-41. County boards of alcoholic control.
- 18-42. Compensation for members of county boards.
- 18-43. Persons disqualified for membership on boards.
- 18-44. Bonds required of members of county boards.
- 18-45. Powers and duties of county boards.
- 18-46. No sales except during hours fixed by county boards; sales to minors, habitual drunkards, etc.; discretion

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- of managers and employees; list of persons convicted of drunkenness, etc.; unlawful to buy for person prohibited.
- 18-47. Drinking upon premises prohibited; stores closed on Sundays, election days, etc.
- 18-48. Possession illegal if taxes not paid; punishment and forfeiture for violations; possession in container without proper stamp, prima facie evidence; counterfeit or unauthorized stamps.
- 18-49. Transportation, not in excess of one gallon, authorized; transportation in course of delivery to stores.
- 18-49.1. Regulating transportation in excess of one gallon for delivery to federal reservation or to another state; conditions to be complied with.
- 18-49.2. Transportation in excess of one gallon prohibited, exceptions; regulations of A.B.C. Board.
- 18-49.3. Violation of § 18-49.1 or 18-49.2 a misdemeanor; seizure and disposition of vehicle and alcoholic beverages.
- 18-49.4. Exceptions to the application of §§ 18-49.1 to 18-49.3.
- 18-49.5. Transportation, possession and sale at installations operated by or for armed forces.
- 18-50. Possession for sale and sales of illicit liquors; sales of liquors purchased from stores.
- 18-51. Drinking or offering drinks on premises of stores, and public roads or streets; drunkenness, etc., at athletic contests or other public places.
- 18-52. Advertising permitted in newspapers, magazines and periodicals.
- 18-53. Advertising by county A.B.C. stores and on billboards prohibited.
- 18-54. Advertising by radio broadcasts prohibited.
- 18-55. Additional regulations as to advertising.
- 18-56. Salaries and expenses paid from proceeds of sales.
- 18-57. Net profits to be paid into general fund of the various counties.
- 18-58. Transportation into State; and purchases, other than from stores, prohibited.
- 18-59. Violations by member or employee of boards, cause for removal and punishable as misdemeanor.
- 18-60. Definition of "alcoholic beverage."

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- 18-61. County elections as to liquor control stores; application of Turlington Act; time of elections.
- 18-62. Elections in counties now operating stores, not required for continued operation.

### Article 4.

#### Beverage Control Act of 1939.

- 18-63. Title.
- 18-64. Definitions.
- 18-65. Regulations; statement required on container; application of other law.
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- 18-67. Manufacture.
- 18-68. Bottler's license.
- 18-69. Wholesaler's license.
- 18-69.1. Prohibition against exclusive outlets.
- 18-69.2. Breweries forbidden to coerce or persuade wholesalers to violate chapter or unjustly cancel contracts or franchises; prima facie evidence of franchise; injunctions; revocation or suspension of licenses and permits.
- 18-70. Sales on railroad trains.
- 18-71. Salesman's license.
- 18-72. Character of license.
- 18-73. Retail license issued for sale of wines.
- 18-74. Amount of retail license tax.
- 18-75. Who may sell at retail or wholesale.
- 18-76. County license to sell at retail.
- 18-77. Issuance of license mandatory; sales during religious services.
- 18-78. Revocation or suspension of license or permit; confiscation of beverages not meeting standards of State Board of Alcoholic Control; rule making power of Board; refusal to surrender permit.
- 18-78.1. Prohibited acts under license for sale of malt beverages and wines for consumption on or off premises.
- 18-79. State license.
- 18-80. State license to sell wine at retail.
- 18-81. Additional tax.
- 18-81.1. Use of funds allocated to counties and municipalities.
- 18-82. By whom tax payable.
- 18-83. Nonresident manufacturers and wholesale dealers to be licensed.
- 18-83.1. Resident wholesalers shall not purchase beverages for resale from unlicensed nonresidents.
- 18-83.2. Importers to be licensed.
- 18-84. Payment of tax by retailers.
- 18-85. Tax on spirituous liquors; sale of fortified wines in A.B.C. stores.

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- 18-85.1. Tax on fortified wines.
- 18-86. Books, records, reports.
- 18-87. No license for sales upon school property.
- 18-88. License shall be posted.
- 18-88.1. Wine for sacramental purposes exempt from tax.
- 18-88.2. Exemption of beer, etc., sold to ocean-going vessels.
- 18-89. Administrative provisions.
- 18-89.1. Rules and regulations.
- 18-90. Appropriation for administration.
- 18-90.1. Sale to or purchase by minor under eighteen.
- 18-90.2. Revocation of license upon revocation of permit.
- 18-91. Violation made misdemeanor; revocation of permits; forfeiture of license.
- 18-91.1. Persons, firms, or corporations engaged in more than one business to pay on each.
- 18-92. Effective date.
- 18-93. Adoption of federal regulations.

### Article 5.

#### Fortified Wine Control Act of 1941.

- 18-94. Title of article.
- 18-95. Purpose of article.
- 18-96. Definition of "fortified wines."
- 18-97. Certain sales, etc., prohibited; names of persons ordering wines furnished police or sheriff.
- 18-98. Violation made misdemeanor.
- 18-99. Application of other laws; sale of sweet wines; licensing of wholesale distributors.

### Article 6.

#### Light Domestic Wines; Manufacture and Regulation.

- 18-100. Manufacture of domestic wines permitted.
- 18-101. Manufacture by any person, firm or corporation authorized to do business in State.
- 18-102. Rules and regulations of Commissioner of Agriculture.
- 18-103. Information furnished farmers.
- 18-104. Fruit ciders included.

### Article 7.

#### Beer and Wine; Hours of Sale.

- 18-105. Sale between certain hours unlawful.
- 18-106. Permitting consumption on premises during certain hours unlawful.

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- 18-107. Regulation by counties and municipalities.
- 18-108. Violation a misdemeanor; revocation of license.
- 18-108.1. "Beer" defined.

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#### Establishment of Standards for Lawful Wine; Permits, etc.

- 18-109. Powers of State Board of Alcoholic Control.
- 18-110. Duties of persons possessing wine or offering the same for sale.
- 18-111. Statement of analysis to be furnished.
- 18-112. Manufacturers, bottles, wholesalers, et cetera, to obtain permit for sale from Board.
- 18-113. Violation misdemeanor; permit revoked.
- 18-113.1. Misdemeanor for retailer to sell unapproved wines.
- 18-113.2. Types of wine included under provisions of article.
- 18-114. Funds for administration of article.
- 18-115. Definition of "person."
- 18-116. Effective date; disposition of wines on hand.
- 18-116.1. Additional power of local governing body to suspend or revoke retail wine license.
- 18-116.2. Authority of local A.B.C. boards to revoke or suspend permit or limit sales to A.B.C. stores.
- 18-116.3. Effect of revocation of license or permit by local authority.
- 18-116.4. Authority of local boards to restrict days and hours of sale of wine.
- 18-116.5. Investigation of licensed premises; examination of books, etc.; refusal to admit inspector; powers and authority of inspectors; use of A.B.C. officers as inspectors.

### Article 9.

#### Substandard, Imitation and Synthetic Wines.

- 18-117. Possession or sale prohibited.
- 18-118. Violation a misdemeanor.

### Article 10.

#### Regulation or Prohibition of Sale of Wine.

- 18-119. Certain counties authorized to regulate or prohibit sale of wine.
- 18-120. Municipalities in certain counties authorized to regulate or prohibit sale of wine.



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- 18-121. Rules and regulations.
- 18-122. Effective date of resolution prohibiting sale.
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**Article 11.****Elections on Question of Sale of Wine and Beer.**

- 18-124. Provision for elections in counties or municipalities.
- 18-125. Form of ballots.
- 18-126. Effect of vote for or against sale of beer or wine.
- 18-127. Elections in certain municipalities after majority vote in county against sale of wine or beer.
- 18-127.1. Elections on question of sale of 3.2 beer in certain counties.
- 18-127.2. Provisions of § 18-127 extended to municipalities having seasonal population of 1,000 or more.
- 18-128. Wine for sacramental purposes not prohibited.
- 18-128.1. Certain wholesalers excepted.

**Article 12.****Additional Powers of State Board over Wine and Malt Beverages.**

- 18-129. Power of State Board of Alcoholic Control to regulate distribution and sale of wine and malt beverages; determination of qualifications of applicant for permit, etc.
- 18-130. Application for permit; contents.
- 18-131. Permit required for selling, distributing, etc., malt beverages or wine for purpose of resale.
- 18-132. Application to be verified; refusal or revocation of permit; penalty for false statement; independent investigation of applicant.
- 18-132.1. Application fees.
- 18-133. Permit revoked if federal special tax liquor stamp procured.

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- 18-134. Notice of intent to apply for permit; posting or publication of notice; objections to issuance of permit and hearing thereon.
- 18-135. Certification to Department of Revenue of permits issued; issuance of license; revocation of permit or license.
- 18-136. Refusal, suspension or revocation of permit upon personal disqualification, etc.
- 18-137. Hearing upon suspension or revocation of permit.
- 18-138. Rules and regulations for enforcement of article.
- 18-139. Effect of article on existing local regulations as to sale of beer and wine.
- 18-140. Chief of wine and malt beverage division and assistants; inspectors.
- 18-141. Sale and consumption of beer or wine during certain hours prohibited.
- 18-142. Keeping places of business clean, etc.
- 18-143, 18-144. [Repealed.]

**Article 13.****Wholesale Malt Beverage Salesman's Permit.**

- 18-145. Permit required; renewal.
- 18-146. Qualifications of applicant.
- 18-147. Salesmen licensed at time of ratification of article.
- 18-148. License invalid until permit obtained.
- 18-149. Suspension and revocation; acting without permit a misdemeanor.
- 18-150. Salesman responsible for acts of helper.
- 18-151. Hearing.
- 18-152. Employing salesman who has no permit.

**ARTICLE 1.***The Turlington Act.*

§ 18-1. **Definitions; application of article.**—When used in this article—

- (1) The word "liquor" or the phrase "intoxicating liquor" shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt or fermented liquors, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of one per cent or more of alcohol by volume, which are fit for use for beverage purposes: Provided, that the foregoing definition shall not

extend to dealcoholized wine nor to any beverage or liquid produced by the process of which beer, ale, porter, or wine is produced, if it contains less than one-half of one per cent of alcohol by volume, and is otherwise denominated than as beer, ale, or porter, and is contained and sold in, or from, sealed and labeled bottles, casks, or containers, and is made in accordance with the regulations set forth in Title II of "The Volstead Act," an act of Congress enacted October twenty-eighth, one thousand nine hundred and nineteen, and an act supplemental to the National Prohibition Act, "H. R. 7294," an act of Congress approved November twenty-third, one thousand nine hundred and twenty-one.

- (2) The word "person" shall mean and include natural persons, associations, copartnerships, and corporations.
- (3) This article shall not make unlawful any acts authorized or permitted by §§ 18-100 through 18-104, as amended, authorizing cultivation and manufacture of light domestic wines; by §§ 18-36 through 18-62, the Alcoholic Beverage Control Act of 1937 as amended; by §§ 18-63 through 18-92, the Beverage Control Act of 1939 as amended; and by §§ 18-94 through 18-99, the Fortified Wine Control Act of 1941. (1923, c. 1, s. 1; C. S., s. 3411(a).)

**Editor's Note.**—For a summary review of this statute, see 1 N.C.L. Rev. 303.

This article is popularly known as the Turlington Act and is often referred to in cases as such. The act was intended to make the State law conform in a substantial manner to the federal Volstead Act. See *State v. Davis*, 214 N.C. 787, 1 S.E.2d 104 (1939); *State v. Carpenter*, 215 N.C. 635, 3 S.E.2d 34 (1939).

**History of Act.**—See *Staley v. Winston-Salem*, 258 N.C. 244, 128 S.E.2d 604 (1962).

**Similarity to Volstead Act.**—This and the following section are, in many respects, the same as "the Volstead Act," although more stringent. *State v. Sigmon*, 190 N.C. 684, 130 S.E. 854 (1925).

An act by our legislature to make the State law conform to the "Volstead Act" passed by Congress, is valid, and in some respects more stringent than the congressional act. *State v. Hickey*, 198 N.C. 45, 150 S.E. 615 (1929).

**Same—Power of State to Pass Stricter Regulation.**—The State has the power through legislation to further regulate and control the manufacture, sale, etc., of intoxicating liquor beyond the restrictions contained in a federal statute upon the subject, the latter prevailing in interstate regulations in case of conflict; and the State statute may consistently give further effect of efficiency to the federal statute upon the subject as it relates to State regulation. *State v. Hammond*, 188 N.C. 602, 125 S.E. 402 (1924).

**Effect upon Existing Legislation.**—This article, with certain reservations as to existing State laws, established the rule prevailing on the subject of prohibition, and it applied to the extent that it was incon-

sistent with former legislation and was in conformity with valid federal statutes on the subject where interstate regulation was concerned. *State v. Hammond*, 188 N.C. 602, 125 S.E. 402 (1924).

**The Turlington Act remains in full force and effect except as modified by the Alcoholic Beverage Control Act of 1937**, codified as article 3 of this chapter, and as thus modified is the primary law in territory which has not elected to come under the A.B.C. Act. *State v. Barnhardt*, 230 N.C. 223, 52 S.E.2d 904 (1949); *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950). See *State v. Avery*, 236 N.C. 276, 72 S.E.2d 670 (1952); *State v. Hill*, 236 N.C. 704, 73 S.E.2d 894 (1953).

The Turlington Act is still in force in this State, except as modified by the A.B.C. Act, § 18-36 et seq.; and the two acts must be construed together. *State v. May*, 248 N.C. 60, 102 S.E.2d 418 (1958).

**The Two Acts Must Be Read Together.**—To ascertain the status of law regulating the possession, transportation, and sale or possession for the purpose of sale, of intoxicating beverages in nonconforming territory—territory where A.B.C. stores have not been established—the Turlington Act and the Alcoholic Beverage Control Act of 1937 must be read together. *State v. Barnhardt*, 230 N.C. 223, 52 S.E.2d 904 (1949).

The Turlington Act and the Alcoholic Beverage Control Act must be construed in *pari materia* as constituting the law in this State as relating to the purchase, possession and sale of intoxicating liquor. *State v. Avery*, 236 N.C. 276, 72 S.E.2d 670 (1952). See *State v. Hill*, 236 N.C. 704, 73 S.E.2d 894 (1953).

When a warrant or bill of indictment, which charges the unlawful possession and unlawful transportation of intoxicating liquor describes the liquor as "non-tax paid," conviction may be had, as the evidence may warrant, either under the Alcoholic Beverage Control Act, or under the Turlington Act. These statutes are construed in *pari materia*. *State v. Tillery*, 243 N.C. 706, 92 S.E.2d 64 (1956).

**In counties not electing to operate liquor stores the Turlington Act applies as modified** by the provisions of the Alcoholic Beverage Control Act applicable to such counties. *State v. Brady*, 236 N.C. 295, 72 S.E.2d 675 (1952).

**Beverages Not Enumerated.**—It may be shown in evidence as a fact that other beverages than those defined by this section as intoxicating and prohibited are intoxicating in fact and come within the intent and meaning of the statute. *State v. Fields*, 201 N.C. 110, 159 S.E. 11 (1931).

**"Spirituous Liquors."**—See *State v. Giersch*, 98 N.C. 720, 4 S.E. 193 (1887).

**"Intoxicating liquors" as defined in this section includes the more restrictive term "alcoholic beverages"** as defined in § 18-60, and the terms are not synonymous. *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**Sloe Gin Is Intoxicating Liquor.**—Testi-

mony that defendant had in his possession sloe gin is evidence of possession of intoxicating liquor. *State v. Holbrook*, 228 N.C. 582, 46 S.E.2d 842 (1948).

**Testimony of Undercover Agent of A.B.C. Board Admissible.**—The direct, unimpeached testimony of an undercover agent for the State Alcoholic Beverage Control Board that he purchased intoxicating liquor from defendant is competent in a prosecution under the Turlington Act, and defendant's contention of variance between indictment and proof on the ground that the indictment related to the Turlington Act and the officer's sole duty related to the enforcement of the State's Alcoholic Beverage Control Act, is feckless. *State v. Taylor*, 236 N.C. 130, 71 S.E.2d 924 (1952).

**Cited in** *State v. Dowell*, 195 N.C. 523, 143 S.E. 133 (1928); *Sprunt v. Hewlett*, 208 N.C. 695, 182 S.E. 655 (1935); *Inscow v. Boone*, 208 N.C. 698, 182 S.E. 926 (1935); *Hill v. Board of County Comm'rs*, 209 N.C. 4, 182 S.E. 709 (1935); *State v. Ellis*, 210 N.C. 166, 185 S.E. 663 (1936); *McCotter v. Reel*, 223 N.C. 486, 27 S.E.2d 149 (1943); *Davis v. Charlotte*, 242 N.C. 670, 89 S.E.2d 406 (1955); *Fulton v. City of Morganton*, 260 N.C. 345, 132 S.E.2d 687 (1963).

**§ 18-2. Manufacture, sale, etc., forbidden; construction of law; nonbeverage liquor.**—No person shall manufacture, sell, barter, transport, import, export, deliver, furnish, purchase, or possess any intoxicating liquor except as authorized in this article; and all the provisions of this article shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished, and possessed, but only as provided by Title II of "The Volstead Act," act of Congress enacted October twenty-eighth, one thousand nine hundred and nineteen, an act supplemental to the National Prohibition Act, "H. R. 7294," an act of Congress approved November twenty-third, one thousand nine hundred and twenty-one. (1923, c. 1, s. 2; C. S., s. 3411(b).)

**Cross References.**—As to law allowing sale, the Alcoholic Beverage Control Act of 1937, see §§ 18-36 through 18-62, and the Beverage Control Act of 1939, see §§ 18-63 through 18-93.

**Constitutionality.**—The State in its inherent and reserved power preserved to it by the Tenth Amendment to the federal Constitution may enact valid laws relating to prohibition when not in conflict with the Eighteenth Amendment to the federal Constitution, or congressional legislation, and this section, making the purchase of intoxicating liquor a criminal offense, is valid and enforceable. *State v. Lassiter*, 198 N.C. 352, 151 S.E. 721 (1930).

**State's Regulations in Relation to Interstate Commerce Clause.**—Both by the Constitution of the United States (Amendment XXI) and this chapter liquor has been placed in a category somewhat different from other articles of commerce, and the State's regulations thereof should not be held obnoxious to the interstate commerce clause, unless clearly in conflict with granted federal powers and congressional action thereunder. *State v. Hall*, 224 N.C. 314, 30 S.E.2d 158 (1944).

**Effect of Acquiring Possession Prior to Article.**—Evidence tending to show that the defendant had intoxicating liquor in his possession before the efficacy of this ar-



ticle, is not a defense under the provisions of this article for the defendant's possession a year thereafter, upon the trial for violating the prohibition law. *State v. Knight*, 188 N.C. 630, 125 S.E. 406 (1924).

**A violation of this section is a crime separate and distinct from a violation of §§ 18-29, 18-48, and 18-50.** *State v. Simmons*, 256 N.C. 688, 124 S.E.2d 887 (1962).

**Effect on Recovery under Compensation Act.**—The mere fact that an applicant for compensation under the provisions of the Workmen's Compensation Act had in his possession whiskey contrary to this section does not alone prevent the recovery of compensation. *Jackson v. Dairymen's Creamery*, 202 N.C. 196, 162 S.E. 359 (1932).

**When Receipt Prohibited.**—There is no provision in this article which in express terms prohibits one from receiving intoxicating liquors. Except as embraced and included by the acts which are prohibited in the statute, the mere receiving of intoxicating liquors is not forbidden. *State v. Hammond*, 188 N.C. 602, 125 S.E. 402 (1924).

It is bad pleading to make the mere receipt of liquor the subject of a separate and independent count; and the charge that the mere receipt of same, though only in the home of the recipient, and kept there only for a lawful purpose, is forbidden, is not warranted by any proper construction of the statute that has been suggested to us. *State v. Hammond*, 188 N.C. 602, 125 S.E. 402 (1924).

**A person is guilty of unlawfully transporting intoxicating liquor in violation of this section, as modified by the Alcoholic Beverage Control Act of 1937, if he knowingly transports intoxicating liquor for any purpose other than those specified in the Alcoholic Beverage Control Act, or in a quantity in excess of the gallon, unless such liquor is in actual course of delivery to an alcoholic beverage control board established in a county coming under the provisions of the Alcoholic Beverage Control Act.** *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

The word "transport" means to carry or convey from one place to another, and therefore a person transports intoxicating liquor if he carries it on his person or conveys it in a vehicle under his control or in any other manner, regardless of whether the liquor belongs to him or is in his custody. *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**The exemption from criminal liability for the transportation of liquor into or through**

a county not within the provisions of article 3 of this chapter applies to liquor being transported from a county which is under the provisions of § 18-49, or from without the State as provided in § 18-58. *State v. Holbrook*, 228 N.C. 582, 46 S.E.2d 842 (1948). See *State v. Barnhardt*, 230 N.C. 223, 52 S.E.2d 904 (1949).

This section prohibiting the transportation of intoxicating liquor has been modified by §§ 18-49 and 18-58 so that it is not unlawful to transport through a county which has not elected to come under the provisions of the Alcoholic Beverage Control Act, alcoholic beverages in actual course of delivery to any alcoholic beverage control board, or for a person to transport into such county not in excess of one gallon of alcoholic beverages lawfully purchased outside the State or in counties of the State which have elected to come under the Alcoholic Beverage Control Act, provided the liquor is for personal use and the seals of the containers have not been broken. *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**Guilty Knowledge.**—This section relating to alcoholic liquors must be interpreted in the light of the common-law principle that guilty knowledge is an essential element of crime, and therefore a person cannot be held guilty of illegally transporting intoxicating liquors if he has no knowledge of the nature of the goods transported. *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**Section Liberally Construed — What Amounts to Possession.**—This section was expressly made to be liberally construed to prevent intoxication, and makes it unlawful for one to possess intoxicating liquor, with restricted qualifications; and a conviction will be sustained under a verdict of guilty upon evidence tending to show that the defendant received a bottle of intoxicating liquor from another, took a drink therefrom, and handed the bottle back to the one from whom he had received it, neither of them being upon his own premises. *State v. McAllister*, 187 N.C. 400, 121 S.E. 739 (1924).

**Character of Possession Necessary.**—The possession may, within this statute, be either actual, or constructive. *State v. Meyers*, 190 N.C. 239, 129 S.E. 600 (1925). See also *State v. Norris*, 206 N.C. 191, 173 S.E. 14 (1934); *State v. Webb*, 233 N.C. 382, 64 S.E.2d 268 (1951); *State v. Harrelson*, 245 N.C. 604, 96 S.E.2d 867 (1957); *State v. Glenn*, 251 N.C. 156, 110 S.E.2d 791 (1959).

A prima facie case of the unlawful sale

of intoxicating liquors may be established by circumstances sufficient to show that the defendant had in his constructive possession large quantities of whiskey not on his premises, in the possession of others who held it for him. *State v. Pierce*, 192 N.C. 766, 136 S.E. 121 (1926).

An accused has possession of intoxicating liquor within the meaning of this section when he has both the power and the intent to control its disposition or use. The requisite power to control may reside in the accused acting alone or in combination with others. *State v. Fuqua*, 234 N.C. 168, 66 S.E.2d 667 (1951).

If a man procures another to obtain liquor for him and put it in a given place, and the other performs this agreement and places the liquor, then the possession is complete. A person may be in the possession of the article which he has not at the moment about his person. The constructive possession, as well as the actual possession, is in the contemplation of the statute. *State v. Meyers*, 190 N.C. 239, 129 S.E. 600 (1925); *State v. Pierce*, 192 N.C. 766, 136 S.E. 121 (1926).

#### **Transportation as Including Possession.**

—Where the evidence is sufficient to convict the defendant of transporting whiskey under this and the following section, the transportation of spirituous liquor includes the possession. *State v. Sigmon*, 190 N.C. 684, 130 S.E. 854 (1925).

Where an indictment for violating our prohibition law contains a count as to the unlawful possession and also unlawfully transporting spirituous liquor, an acquittal upon the first is not inconsistent with a conviction on the second issue. They are two distinct offenses under the statute. *State v. Sigmon*, 190 N.C. 684, 130 S.E. 854 (1925).

Only a person in the actual or constructive possession of nontax-paid whiskey, absent conspiracy or aiding and abetting, could be guilty of the unlawful transportation thereof. *State v. Wells*, 259 N.C. 173, 130 S.E.2d 299 (1963).

**Purpose of Possession.**—Upon the trial for transporting intoxicating liquors in violation of this article, the purpose of the possession of the intoxicants, or that they were for the purpose of profit, are immaterial, and the fact that the person accused is carrying them from one place to another is sufficient. *State v. Sigmon*, 190 N.C. 684, 130 S.E. 854 (1925).

Whether the transportation of nontax-paid whiskey is unlawful does not depend upon whether it is being transported for

the purpose of sale. *State v. Wells*, 259 N.C. 173, 130 S.E.2d 299 (1963).

**Possession of Tax-Paid Liquor at Unauthorized Place Unlawful.**—Possession of tax-paid whiskey is illegal under this section if it is not at an authorized place. *State v. Welborn*, 249 N.C. 268, 106 S.E.2d 204 (1958).

**The possession of less than one gallon of gin** and the possession of less than five gallons of beer raises no presumption that the possession of the gin or beer was for the purpose of sale. *State v. Harrelson*, 245 N.C. 604, 96 S.E.2d 867 (1957). See § 18-32.

**The possession of nontax-paid liquor** in any quantity anywhere in the State is, without exception, unlawful. *State v. Barnhardt*, 230 N.C. 223, 52 S.E.2d 904 (1949).

**Possession of One Gallon of Tax-Paid Liquor for Personal Use.**—A person living in a county which has not elected to come under the Alcoholic Beverage Control Act may lawfully transport to and keep in his private dwelling, for his own use, not more than one gallon of tax-paid liquor; but subject to this exception, possession within such territory of any quantity of liquor is prima facie evidence that its possession is in violation of this section. *State v. Wilson*, 227 N.C. 43, 40 S.E.2d 449 (1946).

A person living in nonconforming territory may lawfully transport, in sealed containers, to his own private dwelling for family uses, not in excess of one gallon of tax-paid liquor at any one time, provided it is acquired from an A.B.C. store in this State or legally purchased in another state (§§ 18-49, 18-58), and he may there keep and possess the same for family use. *State v. Barnhardt*, 230 N.C. 223, 52 S.E.2d 904 (1949).

#### **Burden of Showing Right to Possess.**—

The Turlington Act contemplates that no person shall transport or have in his possession for the purpose of sale any intoxicating liquor. There are exceptions and, ordinarily, the burden is on him who asserts that he comes within the exception to show by way of defense that he is one of that class authorized by law to have intoxicants in his possession. *State v. Gordon*, 224 N.C. 304, 30 S.E.2d 43 (1944). See also notes to §§ 18-49 and 18-58.

#### **Possession — Admissibility of Evidence.**

—Where on a trial for unlawful possession of intoxicating liquor there is evidence tending to show that on the premises of the defendant's gasoline station two barrels partly containing whiskey were found concealed, buried in the ground and encased in concrete of the same character

and material as the filling station, etc., testimony of the officer that the barrels, from the indication, had thus been there since the building of the station is competent as tending to show that the possession of the whiskey was for an unlawful purpose. *State v. Hege*, 194 N.C. 526, 140 S.E. 80 (1927).

Evidence tending to show that defendant was apprehended while driving a car owned by him, that he fled the scene with his companion in the car when it bogged down in the mud, and that three and a half gallons of untaxed liquor was found in the car, is held sufficient to be submitted to the jury on the charge of illegal possession of intoxicating liquor for the purpose of sale and on the charge of unlawfully transporting intoxicating liquor, as charged in the bill of indictment. *State v. Epps*, 213 N.C. 709, 197 S.E. 580 (1938).

**Same — Evidence Sufficient to Go to Jury.**—On a trial for the unlawful possession of intoxicating liquors, evidence of the State tending to show that the defendant had several gallons of whiskey concealed on the premises of his gasoline station held, sufficient to take the case to the jury on defendant's motion to dismiss upon the State's evidence. *State v. Hege*, 194 N.C. 526, 140 S.E. 80 (1927).

**Same—Defense.** — Where the defendant is indicted for the unlawful possession of whiskey under this section, evidence of its possession before the enactment of the statute is no defense. *State v. Hege*, 194 N.C. 526, 140 S.E. 80 (1927).

**Purchase and Transportation for Use in Home.** — It is unlawful to purchase and transport intoxicating liquor under this section even though it is intended for use in the home under § 18-11. *State v. Winston*, 194 N.C. 243, 139 S.E. 240 (1927).

**Warrant or Indictment.** — Under this section a warrant or indictment should charge the unlawful possession or sale of intoxicating liquors. *State v. May*, 248 N.C. 60, 102 S.E.2d 418 (1958).

**Separate Offenses Charged in Same Warrant.**—The offenses of delivering, and of keeping for sale, are separate offenses under this article and although charged in the same warrant, they will be treated as separate counts. *State v. Jarrett*, 189 N.C. 516, 127 S.E. 590 (1925).

**Purchase or Sale in Mecklenburg County.**—The Alcoholic Beverage Control Acts have not modified this section in such a manner as to permit the purchase or sale of intoxicating liquors in Mecklenburg County, which has not authorized the es-

tablishment of A.B.C. stores. *State v. Gray*, 223 N.C. 120, 25 S.E.2d 434 (1943).

**Evidence That Liquor Is Not Tax-Paid Admissible.**—In a prosecution under this section, evidence tending to show that the liquor in defendant's possession was not tax-paid is competent. *State v. Wilson*, 227 N.C. 43, 40 S.E.2d 449 (1946).

**Testimony by officers searching without a warrant** that they found a quantity of nontax-paid liquor in defendant's car was held competent. *State v. Vanhoy*, 230 N.C. 162, 52 S.E.2d 278 (1949).

**Sufficiency of Evidence—To Convict of Transporting.**—Where a car, parked with the rear to the road and with the tail light concealed by a cap but with the front lights on, and the rear of the car smelled of liquor, and empty jugs, and a funnel which smelled of liquor, were found on the ground near, and someone ran through the field as the officers approached the car, and the officers arrested the defendant who came up after their arrival, carried him to jail, and upon return to the place found the jug and funnel gone, and a car which passed ran up the road a piece turned around and came back, it was held that the facts were sufficient to justify a finding "beyond a reasonable doubt that not only defendant was transporting liquors, but he had confederates and had been getting the liquor and had sold out and gone back to them to get another load. He had all the implements of a blind tiger transporting liquor. The officers caught him before he had gotten his new supply." *State v. Sigmon*, 190 N.C. 684, 130 S.E. 854 (1925).

Evidence that officers found two full bottles of nontax-paid whiskey in defendant's car immediately after arresting him for driving the car recklessly and at excessive speed is sufficient to support his conviction of illegal transportation of intoxicating liquor. *State v. Vanhoy*, 230 N.C. 162, 52 S.E.2d 278 (1949).

**Same—To Deny Nonsuit.**—Evidence in this case tending to show that the defendant lived in a part of his filling station used as a residence, where was found a quantity of empty bottles smelling of whiskey, and that in the vicinity was a used roadway leading to several places where cartons with bottles of whiskey were concealed, etc., was sufficient to deny defendant's motion as of nonsuit. *State v. Pierce*, 192 N.C. 766, 136 S.E. 121 (1926).

A motion for nonsuit upon the evidence on the trial for a violation of the prohibition law, will be denied when, though circumstantial, the evidence is sufficient up-



on the question of possession and unlawful transportation of intoxicating liquor. *State v. Meyers*, 190 N.C. 239, 129 S.E. 600 (1925).

Where the man went to feed his hogs, the wife ran out of the house with liquor and hid it; the boy took some and ran and spilled it as he ran; the daughter covered up an old thirty-gallon drum, the evidence as to violation of this section and § 18-4 was sufficient to refuse a nonsuit. *State v. Norris*, 206 N.C. 191, 173 S.E. 14 (1934).

The State's evidence tending to show that officers found in defendant's car, which defendant was driving, four fifth-gallon bottles of intoxicating liquor intact and four broken bottles from which some of the contents had leaked out, all of which contained or had contained sloe gin, is sufficient to overrule defendant's motion to nonsuit in a prosecution under this section for transportation and possession of intoxicating liquor in a county which has not elected to come under article 3 of this chapter. *State v. Holbrook*, 228 N.C. 582, 46 S.E.2d 842 (1948).

State's evidence was amply sufficient to carry case to jury, and court did not err in denying defendant's motion for judgment of nonsuit. *State v. Mitchell*, 260 N.C. 235, 132 S.E.2d 481 (1963).

**Evidence Not Sufficient to Show Violation of Section.**—See *State v. Webb*, 233 N.C. 382, 64 S.E.2d 268 (1951).

Evidence was insufficient to support a verdict of guilty of possession of intoxicating liquor. *State v. Harrelson*, 245 N.C. 604, 96 S.E.2d 867 (1957).

**Harmless Error.**—When a defendant is charged in two counts in the bill of indictment with separate offenses of the same grade, and the jury returns a verdict of guilty as to both counts, error in the trial of one count is harmless and does not entitle defendant to a new trial when such error does not affect the verdict on the other count. *State v. Epps*, 213 N.C. 709, 197 S.E. 580 (1938).

**General Verdict Sufficient for Conviction.**—A general verdict of guilty, under evidence tending to show that the defendant unlawfully had in his possession, when not in his private dwelling, intoxicating liquor, under an indictment therefor, as well as for the unlawful receiving and transportation, is sufficient to sustain a

conviction upon the count of possession prohibited. *State v. McAllister*, 187 N.C. 400, 121 S.E. 739 (1924).

**Same—Erroneous Charge as to Separate Count Harmless.**—Where a general verdict of guilty has been rendered against the defendant, upon competent evidence, tending to show that he unlawfully had spirituous liquor in his possession, an erroneous charge as to receiving and transporting it, is harmless error. *State v. McAllister*, 187 N.C. 400, 121 S.E. 739 (1924).

**Sufficiency of Charge.**—The charge in a prosecution for the unlawful transportation of intoxicating liquor was held to be in substantial compliance with the requirements of § 1-180. *State v. Vanhoy*, 230 N.C. 162, 52 S.E.2d 278 (1949).

**Sentence of Two Years Constitutional.**—A sentence of two years for violating this article will not be held as inhibited by the State Constitution as cruel and unusual, by reason of the fact that the judge after the trial and before sentence made inquiry into the character of the defendant, the sentence imposed being in conformity with the provisions of the statute. *State v. Beavers*, 188 N.C. 595, 125 S.E. 258 (1924).

**Separate Punishment for Different Counts.**—Upon a general verdict of guilty to an indictment charging separately unlawful possession of intoxicating liquor and unlawful transportation of intoxicating liquor, the court is empowered to assign separate punishment for each count, notwithstanding that the possession was physically necessary to the act of transporting. *State v. Chavis*, 232 N.C. 83, 59 S.E.2d 348 (1950).

**Distinct Charges Supporting Separate Sentences.**—A charge of unlawful possession of intoxicating liquors for the purpose of sale and a charge of unlawful sale of intoxicating liquors, are distinct charges of separate offenses, and support separate sentences by the court on a general plea of guilty. *State v. Moschoure*, 214 N.C. 321, 199 S.E. 92 (1938).

**Applied in** *State v. Dawson*, 262 N.C. 607, 138 S.E.2d 234 (1964).

**Cited in** *State v. Dowell*, 195 N.C. 523, 143 S.E. 133 (1928); *State v. Scoggins*, 199 N.C. 821, 155 S.E. 927 (1930); *State v. Suddreth*, 223 N.C. 610, 27 S.E.2d 623 (1943).

**§ 18-3. Advertisements, signs, and billboards.**—It shall be unlawful to advertise, anywhere or by any means or method, liquor, or the manufacture, sale, keeping for sale or furnishing of the means, or where, how, from whom, or at what price the same may be obtained. No one shall permit any sign or billboard containing such advertisement to remain upon one's premises: Provided,

the foregoing provision shall not prohibit newspaper, radio, billboard or other forms of advertising for sale of beer, lager beer, ale, porter, fruit juices and/or other light wines containing not more than 3.2 per cent of alcohol by weight. (1923, c. 1, s. 3; C. S., s. 3411(c); 1933, cc. 216, 229.)

**Cross References.**—As to unlawful posting of advertisements without consent of owner, see § 14-145. As to advertising un-

der the Alcoholic Beverage Control Act, see §§ 18-53, 18-54 and 18-55.

**§ 18-4. Advertising, etc., of utensils, etc., for use in manufacturing liquor.**—It shall be unlawful to advertise, manufacture, sell, or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula, direction, or receipt advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor. It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this article, or which has been so used, and no property rights shall exist in any such liquor or property. (1923, c. 1, s. 4; C. S., s. 3411(d).)

**Possession, within the meaning of this section, may be either actual or constructive.** State v. McLamb, 235 N.C. 251, 69 S.E.2d 537 (1952).

If the property designed for the manufacture of liquor was within the power of the defendant in such a sense that he could and did command its use, the possession was as complete within the meaning of this section as if his possession had been actual. State v. Webb, 233 N.C. 382, 64 S.E.2d 268 (1951); State v. McLamb, 235 N.C. 251, 69 S.E.2d 537 (1952).

**Possession of Property Designed for Manufacture.**—An indictment charging the defendant with a violation of this section, in that he had in his possession property designed for the manufacture of intoxicating liquor is not identical with a charge of an attempt to commit a crime. State v. Jaynes, 198 N.C. 728, 153 S.E. 410 (1930).

**"Property Designed for the Manufacture of Liquor."**—The word "designed" is defined as "done by design or purposely," that is, "opposed to accidental or inadvertent." Hence, as used in this section, the phrase "property designed for the manufacture of liquor" means property "fashioned according to a plan" for that purpose. State v. McLamb, 235 N.C. 251, 69 S.E.2d 537 (1952).

**"Designated."**—In the interpretation of this section making it unlawful to possess any property "designated" for use in man-

ufacturing intoxicating liquors, the word "designated" is construed to mean "designed," and so used it is held in this case that evidence of the defendant's guilt of possessing parts of a still designed and intended for the purpose of manufacturing intoxicating liquor was sufficient to be submitted to the jury and to sustain their verdict of guilty, and the fact that the parts had not been assembled into a distillery is immaterial under the language of the statute. State v. Jaynes, 198 N.C. 728, 153 S.E. 410 (1930).

**A plea of not guilty under this section puts in issue every element of the offense charged.** State v. McLamb, 235 N.C. 251, 69 S.E.2d 537 (1952).

**Insufficiency of Charge Not Such as to Warrant Sustaining Motion in Arrest of Judgment.**—See State v. McLamb, 235 N.C. 251, 69 S.E.2d 537 (1952).

**Evidence of the defendant's guilt of possessing parts of a still designed and intended for the purpose of manufacturing intoxicating liquor was sufficient to be submitted to the jury and to sustain their verdict of guilty, and the fact that the parts had not been assembled into a distillery is immaterial under the language of the statute.** State v. Jaynes, 198 N.C. 728, 153 S.E. 410 (1930).

**Cited in** State v. Beasley, 226 N.C. 577, 39 S.E.2d 605 (1946); State v. Edmundson, 244 N.C. 693, 94 S.E.2d 844 (1956).

**§ 18-5. Soliciting orders for liquor.**—No person shall solicit or receive, nor knowingly permit his employee to solicit or receive, from any person any order for liquor or give any information of how liquor may be obtained in violation of this article. (1923, c. 1, s. 5; C. S., s. 3411(e).)

**§ 18-6. Seizure of liquor, equipment and materials, or conveyance; arrests; sale of property.**—When any officer of the law shall discover any person in the act of transporting, in violation of the law, intoxicating liquor, or equipment or materials designed or intended for use in the manufacture of in-



toxicating liquor, in any wagon, buggy, automobile, water or aircraft, or other vehicle, it shall be his duty to seize any and all intoxicating liquor, and any and all equipment or materials designed or intended for use in the manufacture of intoxicating liquor, found therein being transported contrary to law. Whenever intoxicating liquor, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, transported or possessed illegally, shall be seized by an officer, he shall take possession of the vehicle and team or automobile, boat, air or watercraft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested, under the provisions of this article, in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. All liquor seized under this section shall be held and shall, upon the acquittal of the person so charged, be returned to the established owner, and shall within ten days upon conviction or default of appearance of such person be destroyed; provided, that any tax-paid liquor so seized shall within ten days be turned over to the board of county commissioners, which shall within ninety days from the receipt thereof turn it over to hospitals for medicinal purposes or sell it to legalized alcoholic beverage control stores within the State of North Carolina, the proceeds of such sale being placed in the school fund of the county in which such seizure was made, or destroy it. Unless the claimant can show that the property seized is his property, and that the same was used in transporting liquor, or equipment, or materials designed or intended for use in the manufacture of intoxicating liquor, without his knowledge and consent, with the right on the part of the claimant to have a jury pass upon his claim, the court shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the costs of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used for illegal transportation of liquor, equipment or materials designed or intended for use in the manufacture of intoxicating liquor, and shall pay the balance of the proceeds to the treasurer or the proper officer in the county who receives fines and forfeitures, to be used for the school fund of the county. All liens against property sold under the provisions of this section shall be transferred from the property to be proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or aircraft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold, and the proceeds, after deducting the expenses and costs, shall be paid to the treasurer or proper officer in the county who receives fines and forfeitures, to be used for the school fund of the county: Provided, that nothing in this section shall be construed to authorize any officer to search any automobile or other vehicle or baggage of any person without a search warrant duly issued, except where the officer sees or has absolute personal knowledge that there is intoxicating liquor, equipment or materials designed or intended for use in the manufacture of intoxicating liquor, in such vehicle or baggage.

When any vehicle confiscated under the provisions of this section is found to be specially equipped or modified from its original manufactured condition so as



to increase its speed, the court shall, prior to sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. However, if the court should find that such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition, then the court may order that the vehicle be turned over to such governmental agency or public official within the territorial jurisdiction of the court as the court shall see fit to be used in the performance of official duties only, and not for resale, transfer, or disposition other than as junk: Provided, that nothing herein contained shall affect the rights of lien holders and other claimants to said vehicles as set out in this section, and provided further, that where such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition and no one shall be found claiming said vehicle, water or aircraft, or automobile, then in lieu of selling the same, after advertisement, and if no claimant shall appear after the last publication of the advertisement, then the court may order that the vehicle, water or aircraft, or automobile, be turned over to a governmental agency or public official within the territorial jurisdiction of the court, as the court shall see fit, to be used in the performance of official duties only, and not for resale, transfer, or disposition other than as junk. (1923, c. 1, s. 6; C. S., s. 3411(f); 1945, c. 635; 1951, c. 850; 1955, c. 560; 1957, c. 1235, s. 1.)

**Cross References.** — As to disposal of tax-paid liquor that has been seized, see § 18-13. As to fines to be paid into treasurer's office for school fund, see N.C. Const., Art. IX, § 5. As to search warrants, see § 18-13.

**Editor's Note.**—For brief comment on the 1951 amendment, see 29 N.C.L. Rev. 404. For note on search of motor vehicles without warrant, see 30 N.C.L. Rev. 421 (1952). For note as to requisites for forfeiture of vehicles transporting liquor in violation of law, see 35 N.C.L. Rev. 509 (1957).

For a case relating to tort liability of the possessor of an automobile for failure to notify the lienor of a seizure and sale under this section, see *Williams v. Aldridge Motors, Inc.*, 237 N.C. 352, 75 S.E.2d 237 (1953).

For article discussing limits to search and seizure, see 15 N.C.L. Rev. 229. See also 15 N.C.L. Rev. 101.

**Meaning of "Absolute Personal Knowledge."**—Under this section an officer "discovers any person in the act" and has "absolute personal knowledge" (1) when he sees the liquor; (2) when he has absolute personal knowledge . . . acquired through the senses of seeing, hearing, smelling, tasting or touching. 15 N.C.L. Rev. 131, citing *State v. Godette*, 188 N.C. 497, 125 S.E. 24 (1924). See also *State v. Giles*, 254 N.C. 499, 119 S.E.2d 394 (1961).

**Constitutionality.** — The provisions of this section do not contravene the provisions of the State Constitution, Art. I, §§ 11 and 15. *State v. Godette*, 188 N.C. 497, 125 S.E. 24 (1924).

**Arrest without Warrant.** — An arrest

may not be lawfully made by the properly authorized officers of the law for the violation of the State prohibition law, for the transportation of intoxicating liquors upon mere unfounded suspicion arising from information received that the supposed offenders would thus transgress the law on a future occasion, and an arrest so made, not upon an offense committed in the officers' presence or to their personal knowledge as to the particular offense, and without a search warrant, is unlawful and entitles the plaintiff in his action therefor, to recover damages. *State v. DeHerradora*, 192 N.C. 749, 136 S.E. 6 (1926).

It follows that for an officer to fire upon a passing automobile with only an erroneous suspicion that the occupants thereof were thus unlawfully engaged, is without warrant of law, and the unintentional killing of one of those suspected as a result, is manslaughter at least, and a verdict thereof under conflicting evidence will be sustained on appeal. *State v. Simmons*, 192 N.C. 692, 135 S.E. 866 (1926).

But where there is evidence that acting upon information previously received that intoxicating liquors are being unlawfully transported, the proper officers of the law lie in wait for and follow automobile, and can see containers and smell the liquor, they have a right to arrest without warrant and seize the vehicle. *State v. Godette*, 188 N.C. 497, 125 S.E. 24 (1924).

**Same—Evidence Not Excluded.**—Where an arrest by an officer of the law without a warrant, was valid under the provisions of this article, it may not successfully be maintained that evidence thereof should

have been excluded. *State v. Godette*, 188 N.C. 497, 125 S.E. 2d 24 (1924).

**No search warrant is required where the owner or person in charge consents to the search.** *State v. Coffey*, 255 N.C. 293, 121 S.E.2d 736 (1961).

**Or Where Officer Sees or Has Absolute Personal Knowledge of Presence of Liquor.**—No search warrant is required where the officer sees or has absolute personal knowledge that there is intoxicating liquor in an automobile. *State v. Coffey*, 255 N.C. 293, 121 S.E.2d 736 (1961).

**A search warrant is not necessary to search a suitcase for intoxicating liquor when carried by the defendant after arrest, when under the circumstances the officer had reasonable grounds for belief that it contained intoxicating liquor, and these conditions do not fall within the intent of this section.** *State v. Jenkins*, 195 N.C. 747, 143 S.E. 538 (1928).

**When an officer sees nontax-paid liquor clearly visible in a defendant's car, it becomes his duty under this section to take possession of the automobile and the liquor found therein and to arrest the defendant. It is his duty to act either with or without the aid of a search warrant.** *State v. Harper*, 235 N.C. 67, 69 S.E.2d 164 (1952). See *State v. Harper*, 236 N.C. 371, 72 S.E.2d 871 (1952).

The defendant, in operating his automobile in excess of 55 miles an hour in a 35 mile zone on the public streets in a city, committed a misdemeanor in the presence of the city police officers, and they had a right to pursue him and arrest him without a warrant. Consequently, after the defendant was taken into custody, it was the duty of the officers to return to defendant's car and to see that it was taken care of and not abandoned. If, upon approaching the automobile, the officers detected the smell of liquor or other intoxicating beverages therein, it was their duty to take possession of the car and seize the liquor without first obtaining a search warrant. *State v. Giles*, 254 N.C. 499, 119 S.E.2d 394 (1961).

**The "baggage"** of the proviso of this section, refers to baggage accompanying or in the vehicle transporting the intoxicating liquor. *State v. Jenkins*, 195 N.C. 747, 143 S.E. 538 (1928).

By "baggage" is understood such articles of personal convenience or necessity as are usually carried by passengers for their personal use, and not merchandise or other valuables, though carried in the trunk of a passenger, but which are not, however, designed for such use, but for other purposes,

such as sale and the like. *State v. Jenkins*, 195 N.C. 747, 143 S.E. 538 (1928).

A suitcase or traveling bag with four one-half gallon cans of contraband liquor in it is not baggage, under the definition in this section. *State v. Jenkins*, 195 N.C. 747, 143 S.E. 538 (1928).

**"Other Vehicle"**—**Suitcase.**—A suitcase carried in one's hand along a public highway would not be an "other vehicle" within the meaning of this section. *State v. Jenkins*, 195 N.C. 747, 143 S.E. 538 (1928).

**Conduct Amounting to Voluntary Consent to Search.**—See *State v. Coffey*, 255 N.C. 293, 121 S.E.2d 736 (1961).

**Search without Warrant.**—Officers have no authority to search a car without a warrant, under this section where they do not see or have "absolute personal knowledge" that there is intoxicating liquor in the car. *State v. Godette*, 188 N.C. 497, 125 S.E. 2d 24 (1924); *State v. Simmons*, 192 N.C. 692, 135 S.E. 866 (1926); *State v. DeHerradora*, 192 N.C. 749, 136 S.E. 6 (1926).

**This section does not provide for seizure of all intoxicating liquor found in vehicle, but for seizure of any and all intoxicating liquor found therein being transported contrary to law.** *State v. Gordon*, 225 N.C. 241, 34 S.E.2d 414 (1945).

**Forfeiture of Property Used.**—See article in 2 N.C.L. Rev. 126 for a review of the cases and statutes.

**Confiscation and Forfeiture Are Mandatory.**—Where one, who was in possession of seized liquor at the time he was arrested for unlawful acts with respect thereto, pleads guilty to charges of unlawful possession and unlawful transportation of this liquor and thereupon personal judgment is rendered against him, the provisions of this section are mandatory that the judgment also order the confiscation and forfeiture of the liquor so unlawfully possessed and transported. *State v. Hall*, 224 N.C. 314, 30 S.E.2d 158 (1944).

**Jurisdiction to declare forfeiture of a vehicle used in the transportation of intoxicating liquor is in the court which has jurisdiction of the offense charged against the person operating the vehicle.** *State v. Reavis*, 228 N.C. 18, 44 S.E.2d 354 (1947).

**Order Confiscating Car.**—Defendant admitted ownership of the car in which two bottles of nontax-paid whiskey were being transported at the time of his arrest, and he was found guilty of unlawful transportation of intoxicating liquor. This was held sufficient to sustain the court's order confiscating his car and ordering it sold in conformity with the statute. *State*

v. Vanhoy, 230 N.C. 162, 52 S.E.2d 278 (1949).

**Order for Forfeiture Nunc Pro Tunc.** — Where defendant has been convicted of illegal transportation of nontax-paid liquor, the court may at a subsequent term enter an order nunc pro tunc for the forfeiture and sale of the vehicle used for such transportation. *State v. Maynor*, 226 N.C. 645, 39 S.E.2d 833 (1946).

**Use of Vehicle without Knowledge of Owner.** — An instruction that if the jury should find by the greater weight of the evidence that petitioner, the owner of a car seized while being used in the unlawful transportation of intoxicating liquor, aided her husband in attempting flight to avoid arrest, to answer in the affirmative the issue of petitioner's knowledge that the car was being used for the transportation of liquor, is error when petitioner testifies that she did not know her husband was transporting liquor and that she thought the sheriff was pursuing them to serve a *capias* on her husband for a past offense, there being no evidence inconsistent with such belief on the part of petitioner, and the credibility of petitioner's testimony being for the jury. *State v. Ayres*, 220 N.C. 161, 16 S.E.2d 689 (1941).

**Rights under Lien on Automobile Forfeited and Sold.** — This section expressly transfers the lien upon an automobile seized and sold for the unlawful transportation of liquor to the proceeds of the sale, and does not deprive the lienor of his property in conflict with Const., Art. I, § 17, or with the due process clause of the federal Constitution, the statute prescribing notice by publication, and the mode of giving notice being peculiarly a legislative function. *C.I.T. Corp. v. Burgess*, 199 N.C. 23, 153 S.E. 634 (1930).

One claiming a lien under an unregistered mortgage on an automobile seized and sold under the provisions of this section, after notice by publication required by the statute, may not success-

fully maintain his action for possession of the car against the purchaser at the sale had in conformity with law, though he may not have been aware of the proceedings and had no knowledge of the unlawful use of the automobile at the time of its seizure. *C.I.T. Corp. v. Burgess*, 199 N.C. 23, 153 S.E. 634 (1930).

**Liability of Sheriff for Destruction of Vehicle.** — In a case arising prior to this section it was held that where the sheriff took an automobile in custody under a corresponding statute and while he was holding it in a storage garage according to law, it was destroyed by fire through no fault of his, he was not liable on his forthcoming bond. There were two dissenting opinions filed. *Motor Co. v. Sands*, 186 N.C. 732, 120 S.E. 459 (1923).

**Where a vehicle is seized by a municipal police officer** for illegal transportation of intoxicating liquor, the vehicle is in the custody of the officer or of the law and not the municipality. *State v. Law*, 227 N.C. 103, 40 S.E.2d 699 (1946).

**Evidence Required to Hold Passenger.** — To hold a mere passenger, under this section, knowledge of the presence in the automobile of contraband whiskey is insufficient. The evidence must be sufficient to support an inference of some form of control, joint or otherwise, over the automobile or the liquor. *State v. Ferguson*, 238 N.C. 656, 78 S.E.2d 911 (1953); *State v. Coffey*, 255 N.C. 293, 121 S.E.2d 736 (1961).

**Applied in** *State v. Barley*, 240 N.C. 253, 81 S.E.2d 772 (1954).

**Stated in** *Alexander v. Lindsey*, 230 N.C. 663, 55 S.E.2d 470 (1949); *Chadwick v. Salter*, 254 N.C. 389, 119 S.E.2d 158 (1961).

**Cited in** *State v. Gordon*, 224 N.C. 304, 30 S.E.2d 43 (1944); *State v. McPeak*, 243 N.C. 273, 90 S.E.2d 505 (1955); *United States v. One 1955 Model Two-Door Cadillac Coupe Deville*, 136 F. Supp. 304 (E.D.N.C. 1955); *State v. Stinson*, 263 N.C. 283, 139 S.E.2d 558 (1965).

**§ 18-6.1. Officers to refer to State courts cases involving vehicles or equipment or materials seized and arrests made for unlawful transportation.** — All members of the State Highway Patrol and other State and local law enforcing officers shall, whenever seizing any vehicle on account of the unlawful transportation of intoxicating beverages, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, or making arrests of persons on account of same, refer the cases to the State court having jurisdiction thereof, to be determined by such State court in accordance with the law of this State. Any such officer who shall, in violation of this section, refer such cases to courts of another jurisdiction, shall be guilty of misfeasance in office



and subject to a fine of one hundred dollars (\$100.00). (1945, c. 779; 1957, c. 1235, s. 2.)

**Local Modification.** — Forsyth: 1955, c. 311; Mecklenburg: 1951, c. 1061, s. 1.

**§ 18-7. Use of seized property forbidden.**—It shall be unlawful for any State, county, township or municipal officer to use or cause to be used for any purpose whatsoever any automobile or other article of personal property seized by said officer for the reason that the owner of said property or one in possession thereof at time of seizure has violated the terms of the State or federal prohibition laws, or any other laws, until the respective rights of the owner, or person in possession at time of seizure, or mortgagee if one should intervene, are passed upon by the proper court, and final order is made as to proper disposition of said personal property so seized.

It shall be the duty of the officer seizing said automobile or other personal property to store same in a safe and suitable place, until final disposition is ordered.

Any officer or officers violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed fifty dollars or imprisoned not to exceed thirty days. (1927, c. 18.)

**§ 18-8. Witnesses; self crimination; immunity.**—No person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence in obedience to a subpoena of any court in any suit or proceeding based upon or growing out of any alleged violation of this article, but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence; but no person shall be exempt from prosecution and punishment for perjury committed in so testifying. (1923, c. 1, s. 7; C. S., s. 3411(g).)

**Cross References.**—As to general rule of evidence that defendant in criminal action is competent but not compellable to testify, see § 8-54. As to perjury, see § 14-209 et seq.

**Validity.** — Former statute held valid. *State v. Randall*, 170 N.C. 757, 87 S.E. 227 (1915).

**Immunity Must Be Claimed under Section.**—The immunity from punishment of an offender against the State prohibition law when testifying against others charged with the same offense, must be claimed by him under the provisions of this section which superseded C.S. § 3406, so as to make this article conform to the federal act, whereunder no discovery made by such person shall be used against him and he shall be altogether pardoned for the offense done or participated in by him. *State v. Luquire*, 191 N.C. 479, 132 S.E. 162 (1926).

**Only a witness required to testify under compulsion is granted immunity** from prosecution by this section. Hence an officer, who purchased liquor in order to obtain evidence against a suspect and voluntarily testified for the prosecution, could not claim the immunity afforded by this section, and it was error to instruct the

jury to the contrary. *State v. Love*, 229 N.C. 99, 47 S.E.2d 712 (1948).

**Voluntary Testimony of Offender.**—The evidence in criminal prosecutions that may not be received from the offender, is such as is compulsory, and does not apply to one volunteering his testimony and willingly giving it. *State v. Luquire*, 191 N.C. 479, 132 S.E. 162 (1926).

**Same—Waiver.** — An offender against the criminal law relating to prohibition may waive his constitutional right not to give evidence that would tend to incriminate himself by his voluntary act in so doing. *State v. Luquire*, 191 N.C. 479, 132 S.E. 162 (1926).

**Testimony at Former Trial.**—Where a witness on a former trial for violating the prohibition law against the manufacture or sale of intoxicating liquor has voluntarily testified as to matters which may tend to incriminate him, claiming no exemption or immunity when called upon to testify, it is competent for witnesses to testify thereto at the second trial, who were present and heard the testimony at the former one, the testimony not coming within the terms of this section. *State v. Burnett*, 184 N.C. 785, 115 S.E. 57 (1922).

**§ 18-9. Place of sale and delivery; place of prosecution.**—In case of a sale of liquor where the delivery thereof was made by a common or other carrier, the sale and delivery shall be deemed to be made in the county wherein the delivery was made by such carrier or the consignee, his agent or employee, or in the county wherein the sale was made, or from which the shipment was made, and prosecution for such sale or delivery may be had in either county. (1923, c. 1, s. 8; C. S., s. 3411(h).)

**§ 18-10. Uniting separate offenses in indictment, etc.; bill of particulars; trial.**—In any affidavit, information, warrant, or indictment for the violation of this article, separate offenses may be united in separate counts, and the defendant may be tried on all at one trial, and the penalty for all offenses may be imposed. It shall not be necessary in any affidavit, information, warrant, or indictment to give the name of the purchaser or to include any defensive negative averments, but it shall be sufficient to state that the act complained of was then and there prohibited and unlawful; but this provision shall not be construed to preclude the trial court from directing the furnishing the defendant a bill of particulars when it deems it proper to do so. (1923, c. 1, s. 9; C. S., s. 3411(i).)

**Procedure on Motion to Quash Warrant for Duplicity.** — When a defendant in apt time moves to quash a warrant on the ground of duplicity, the solicitor may take a nol. pros. as to all of the charges except one and then proceed to trial on the one charge. Or the solicitor may upon motion

and leave of court amend the warrant and state in separate counts the charges upon which he desires to proceed, provided they were originally set out in the warrant. *State v. Williamson*, 250 N.C. 204, 108 S.E.2d 443 (1959).

**§ 18-11. Possession prima facie evidence of keeping for sale.**—The possession of liquor by any person not legally permitted under this article to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this article. But it shall not be unlawful to possess liquor in one's private dwelling while the same is occupied and used by him as his dwelling only, provided such liquor is for use only for the personal consumption of the owner thereof, and his family residing in such dwelling, and of his bona fide guests when entertained by him therein. (1923, c. 1, s. 10; C. S., s. 3411(j).)

**Editor's Note.**—For a discussion of the wisdom of permitting proof of possession to raise a presumption of unlawful handling for gain, see 5 N.C.L. Rev. 302.

**Liberal Construction.**—This section is to be liberally construed to prevent the use of liquor as a beverage; and the possession of such liquor is made prima facie evidence of the violation of the law, but the possession thereof for the personal consumption of the owner and bona fide guests, etc., is allowed. *State v. Hammond*, 188 N.C. 602, 125 S.E. 402 (1924).

**Rule of Evidence Applies in Any Prosecution for Possession of Liquor for Purpose of Sale.**—The provisions of § 18-50 and this section are not irreconcilable. Indeed, when the two statutes are considered as related parts of the composite whole, they become dovetailed in such manner as to make a clear and understandable regulation. The term "not legally permitted," as used in this section, and the term "illicit" as used in § 18-50, may not be equally

comprehensive, yet both designate or describe a type of intoxicating beverage a person may not lawfully possess for the purpose of sale. To that extent at least they are synonymous. Therefore, the rule of evidence created by this section applies in any prosecution for the possession of liquor for the purpose of sale. *State v. Hill*, 256 N.C. 704, 73 S.E.2d 894 (1953), overruling *State v. Locky*, 214 N.C. 525, 199 S.E. 715 (1938), *State v. McNeill*, 225 N.C. 560, 35 S.E.2d 629 (1945), and *State v. Peterson*, 226 N.C. 255, 37 S.E.2d 591 (1946). See *State v. Gibbs*, 238 N.C. 258, 77 S.E.2d 779 (1953).

Where a warrant charged generally that defendant had in his possession nontax-paid whiskey for the purpose of sale it was held that upon the facts of the case the word nontax-paid was merely used to describe the whiskey and to designate it as unlawful rather than to restrict the offense charged to a violation of § 18-50, and therefore, the prima facie presumption from the

possession of three gallons of such whiskey, that the possession was for the purpose of sale, obtains. *State v. Merritt*, 231 N.C. 59, 55 S.E.2d 804 (1949).

**Section Limited to Private Dwelling Used Exclusively as a Dwelling.** — The provision of this section that a person may legally possess intoxicating liquor in his dwelling for his personal consumption is limited by its terms to a private dwelling occupied and used exclusively as a dwelling, and a person may not lawfully possess intoxicating liquor in a building or structure used and operated by such person as a filling station and dwelling combined when the parts of the structure used for the respective purposes are connected. *State v. Hardy*, 209 N.C. 83, 182 S.E. 831 (1935).

The provision of this section permitting the possession of intoxicating liquor for personal use applies only to possession in a structure used exclusively as a dwelling, and therefore defendants' possession in the structure used as a dwelling and storehouse was illegal. *State v. Carpenter*, 215 N.C. 635, 3 S.E.2d 34 (1939).

**Possession as Evidence of Sale.** — If one had possession of liquor as disclosed by this record it was prima facie evidence that he had it for sale. If not in his private dwelling, if he had actual constructive possession, whether for sale or not, it is a violation of law. *State v. McAllister*, 187 N.C. 400, 121 S.E. 739 (1924); *State v. Knight*, 188 N.C. 630, 125 S.E. 406 (1924); *State v. Pierce*, 192 N.C. 766, 136 S.E. 121 (1926); *State v. Parker*, 234 N.C. 236, 66 S.E.2d 907 (1951).

But the prima facie case so established may be rebutted by showing that possession was lawful under the statutory qualification, the burden remaining with the State to show guilt beyond a reasonable doubt. *State v. Hammond*, 188 N.C. 602, 125 S.E. 402 (1924).

However, the mere possession un rebutted is sufficient to carry the issue to the jury. *State v. Hammond*, 188 N.C. 602, 125 S.E. 402 (1924).

**Prima Facie Evidence Applies to Possession in Private Dwelling.** — The prima facie evidence arising under this section from the possession of liquor applies to possession in a private dwelling or elsewhere. *State v. Dowell*, 195 N.C. 523, 143 S.E. 133 (1928).

**Keeping in Home.** — As shown in this section one is not allowed "to manufacture, sell, barter, etc., or possess intoxicating liquors," except as heretofore explained and modified, but if received only in one's home (without violation of the acts as specified and prohibited in the

statute), and is kept there only for the consumption of the owner and his family and the bona fide guests entertained by him, this constitutes no breach of the present statute, though received since the same was enacted. *State v. Hammond*, 188 N.C. 602, 125 S.E. 402 (1924).

Such possession in the absence of a count in the indictment charging that it was for prohibited purposes, is not made unlawful by the State prohibition statutes. *State v. Mull*, 193 N.C. 668, 137 S.E. 866 (1927).

Under this section modified by the applicable provisions of the Alcoholic Beverage Control Act, a person may lawfully have or keep in his private dwelling while the same is occupied and used by him as his dwelling only an unlimited quantity of intoxicating liquor upon which the taxes imposed by law have been paid for use only for the personal consumption of himself, and of his family residing in such dwelling, and his bona fide guests when entertained by him therein. *State v. Brady*, 236 N.C. 295, 72 S.E.2d 675 (1952); *State v. Ritchie*, 243 N.C. 182, 90 S.E.2d 301 (1955); *State v. Bell*, 264 N.C. 350, 141 S.E.2d 493 (1965).

**When Possession in Private Dwelling Unlawful.** — Under this section the possession of liquor in the private dwelling of defendant, for any other purpose than stated in the exception, is unlawful. *State v. Dowell*, 195 N.C. 523, 143 S.E. 133 (1928).

**Purchase and Transportation to Home Unlawful.** — While this section does not make it a criminal offense for one to have intoxicating liquor in his own dwelling for his own personal use or that of his family and friends, it is a violation of the criminal law, by the express provisions of § 18-2, for him to either purchase it elsewhere or carry it there. *State v. Winston*, 194 N.C. 243, 139 S.E. 240 (1927).

**The possession in one's dwelling of not more than one gallon of liquor upon which the tax has been paid raises no presumption that the possession is unlawful.** This applies even though the dwelling is in dry territory. And in order to convict the State must establish by independent evidence, unaided by any presumption, that the possession is unlawful. In such cases, in the absence of evidence of possession of nontax-paid liquor or more than one gallon of tax-paid intoxicating beverage, prima facie evidence of the violation of the statute is wanting. *State v. Barnhardt*, 230 N.C. 223, 52 S.E.2d 904 (1949).



The presence of four bottles containing less than a gallon of whiskey in a cabin near his filling station which was occupied by defendant would not be sufficient to constitute prima facie evidence that the liquor was being kept for the purpose of sale. *State v. Watts*, 224 N.C. 771, 32 S.E.2d 348 (1944).

Where a person has in his possession tax-paid intoxicating liquors in quantity not in excess of one gallon, in his private dwelling in a county in which the sale of such intoxicating liquors is not authorized by § 18-36 et seq., nothing else appearing, such possession is not now prima facie evidence that such intoxicants are so possessed for the purpose of sale under this section. *State v. Suddreth*, 223 N.C. 610, 27 S.E.2d 623 (1943).

Proof of the possession by defendant in his home of less than one gallon of legally acquired tax-paid liquor raises no presumption against him, and nothing else appearing, a verdict of not guilty should be directed in a prosecution for possession for the purpose of sale. To this extent, this section, raising the presumption from the possession of any quantity of liquor that such possession is for the purpose of sale, with burden upon defendant to prove that he possessed same in his private dwelling while occupied as such, for family use purposes permitted by the statute, has been modified by the Alcoholic Beverage Control Act. *State v. Hill*, 236 N.C. 704, 73 S.E.2d 894 (1953).

**Possession in Building Used as Combination Store and Dwelling.** — Where the evidence disclosed that defendant was in possession of tax-paid whiskey in a building used by him as a combination store and dwelling and the whiskey was found in the room used as a bedroom, with the seal of one of the bottles broken, but it was stipulated by defendant's counsel that defendant had the whiskey in his store, the evidence was sufficient under this section to support the charge of unlawful possession and defendant's motion to nonsuit was properly denied. *State v. Welborn*, 249 N.C. 268, 106 S.E.2d 204 (1958).

**Proof of the possession of more than one gallon of intoxicating liquor,** even though it is found in the private dwelling of defendant and the tax thereon has been paid, is prima facie evidence that such liquor is unlawfully possessed and is being kept for the purpose of sale. Defendant is protected against the presumption of illegality or the rule of evidence created by this section only so long as he does not possess more than one gallon.

Where he possesses more than one gallon he has the burden to rebut the prima facie evidence by showing that such possession not only comes within the exceptive provisions of this section, but also that it was legally acquired and transported to his dwelling and kept there for family uses only. *State v. Barnhardt*, 230 N.C. 223, 52 S.E.2d 904 (1949). See §§ 18-49, 18-58.

Evidence tending to show that more than one gallon of intoxicating liquor upon which the tax had not been paid was found in a house owned by defendant in dry territory justifies an instruction to the effect that it is unlawful to possess at any one time more than one gallon of intoxicating liquor even in the possessor's home when defendant offers no evidence tending to show that the liquor was acquired from an A.B.C. store in this State or was purchased in another state and legally transported to his residence in quantities of not more than one gallon at any one time. *State v. Barnhardt*, 230 N.C. 223, 52 S.E.2d 904 (1949).

While a person may lawfully possess for family use any quantity of legally acquired tax-paid liquor in his private dwelling while occupied by him as such, nevertheless the possession of more than one gallon of tax-paid liquor, even within a private dwelling, invokes the presumption that such liquor is kept for the purpose of sale. *State v. Hill*, 236 N.C. 704, 73 S.E.2d 894 (1953).

In a county not electing to operate county liquor stores, this section, as modified by §§ 18-49 and 18-58, renders the possession of more than one gallon of tax-paid liquor, even though in the home of a resident, prima facie evidence that such liquor is kept for the purpose of sale in a prosecution under a warrant or indictment charging that offense. *State v. Brady*, 236 N.C. 295, 72 S.E.2d 675 (1952); *State v. Ritchie*, 243 N.C. 182, 90 S.E.2d 301 (1955).

**Possession of Any Quantity of Nontax-Paid Liquor.**—Nontax-paid whiskey is outlawed by statute in this State. The possession of any quantity of nontax-paid liquor is, without exception, unlawful, and this section raises the presumption, even though less than one gallon in quantity, that possession is for the purpose of sale. *State v. Guffey*, 252 N.C. 60, 112 S.E.2d 734 (1960).

**Possession may be either actual or constructive** within the meaning of this section. *State v. Parker*, 234 N.C. 236, 66 S.E.2d 907 (1951).

Evidence tending to show that ninety-six gallons of intoxicating liquor were found in the basement of the tenant house on defendant's farm, and tending to show that he alone had key to the door to the basement, is sufficient to support constructive possession. *State v. Parker*, 234 N.C. 236, 66 S.E.2d 907 (1951).

**Time of Possession.** — Under this section, proof of defendant's unlawful possession of nontax-paid whiskey in August, 1958, would constitute prima facie evidence in a separate criminal prosecution based on a transaction of August, 1958, that his possession was for the purpose of sale; but proof of unlawful possession of nontax-paid liquor in August, 1958, standing alone, while a criminal offense, is not relevant to whether his possession, if any, on November 20, 1957, was for the purpose of sale. *State v. Bell*, 249 N.C. 379, 106 S.E.2d 495 (1959).

**Burden of Proving Proper Purposes.** — Where the defendant, charged with the violation of the State prohibition law, seeks to defend himself under the provisions of this article, allowing the possession of intoxicating liquors in his house for his own purposes, he must plead and show that the liquor was for the purpose allowed by the article. *State v. Foster*, 185 N.C. 674, 116 S.E. 561 (1923). See the discussion in 5 N.C.L. Rev. 302.

Under this section the State is not required to allege or prove that the case does not fall within the exception allowing possession for personal use, etc. This being a matter of defense, must be alleged and proven by the defendant. *State v. Dowell*, 195 N.C. 523, 143 S.E. 133 (1928).

The provision of this section making it lawful to possess liquor in a private dwelling for family purposes is an exception to the general rule, and the burden of proof in respect thereto is on defendant. *State v. Wilson*, 227 N.C. 43, 40 S.E.2d 449 (1946).

**Same — Rebuttal by Proof of Large Quantity.** — The possession of a large quantity of whiskey in the home of the defendant raised the prima facie case of her guilt, permitting the inference from the method of its being bottled, etc., that it was for the purpose of an unlawful sale, or that it had been received for unlawful purposes, defendant's motion as of nonsuit thereon was properly denied. *State v. Hammond*, 188 N.C. 602, 125 S.E. 402 (1924).

**Testimony that defendant frequently sleeps in a house is insufficient to show**

that it is his private dwelling within the meaning of this section. *State v. Barnhardt*, 230 N.C. 223, 52 S.E.2d 904 (1949).

**Charge Negating Proper Purpose Unnecessary.** — Where the indictment sufficiently charges the offense of the unlawful possession of whiskey under this section, a charge negating the exception making it lawful to have such possession for family purposes, etc., as provided in this section is unnecessary to a conviction. *State v. Hege*, 194 N.C. 526, 140 S.E. 80 (1927).

An indictment for illegal possession and transportation of intoxicating liquor need not negative the conditions under which intoxicating liquor may be possessed for the purpose of sale and may be transported, since the exceptions are matters of defense. *State v. Epps*, 213 N.C. 709, 197 S.E. 580 (1938).

**Instruction.** — In a prosecution of a resident of a county which has not elected to operate county liquor stores on a charge of possession of intoxicating liquor for the purpose of sale, the court is under duty to instruct the jury upon evidence that three gallons of tax-paid liquor were found in defendant's home, that such possession by defendant in his dwelling for the personal consumption of himself, his family and his bona fide friends therein would be lawful, and error in failing to give such instruction is emphasized by a charge that a person has a right to have one gallon of tax-paid liquor in his home for the personal use of himself and his bona fide guests. *State v. Brady*, 236 N.C. 295, 72 S.E.2d 675 (1952).

**Instruction Using Language of This Section Proper.** — In a prosecution for unlawful possession of intoxicating liquor for the purpose of sale in a county which has not elected to come under the Alcoholic Beverage Control Act, the court may properly charge the law in the language of this section and § 18-13, since the law therein stated constitutes a material part of the law of the case. *State v. Wilson*, 227 N.C. 43, 40 S.E.2d 449 (1946).

**Prima Facie Case for Jury.** — In a prosecution for the unlawful possession of intoxicating liquor for the purpose of sale, evidence that defendant, who resided four miles from the still, came to the still and got one-half gallon of nontax-paid whiskey and left with it, is sufficient to make out a prima facie case for the jury. *State v. Graham*, 224 N.C. 347, 30 S.E.2d 151 (1944).

Where, in a prosecution under § 18-2 for unlawful possession of intoxicating liquor

for the purpose of sale in a county which has not elected to come under the Alcoholic Beverage Control Act, the State offers evidence that defendant had in his possession approximately seventeen and one-half gallons of liquor, and there is no evidence that defendant's possession was for the use of himself, his family and bona fide guests, defendant's motion to nonsuit is properly denied, since this section applies. *State v. Wilson*, 227 N.C. 43, 40 S.E.2d 449 (1946).

Evidence tending to show that defendant was driving his automobile on a highway, that when officers attempted to stop him he attempted to elude them, threw a carton containing three gallons of non-tax-paid whiskey from the car, and drove in a reckless manner until struck from rear by the officers' car and run off the

road, was held sufficient to overrule nonsuit upon each of the charges of illegal possession of whiskey for the purpose of sale and unlawful transportation of same. *State v. Merritt*, 231 N.C. 59, 55 S.E.2d 804 (1949).

**Evidence Sufficient to Warrant Finding That Possession Was for Purpose of Sale.**

—See *State v. Jenkins*, 234 N.C. 112, 66 S.E.2d 819 (1951).

**Applied in** *State v. Libby*, 213 N.C. 662, 197 S.E. 154 (1938).

**Cited in** *State v. Fuqua*, 234 N.C. 168, 66 S.E.2d 667 (1951); *State v. Hall*, 240 N.C. 109, 81 S.E.2d 189 (1954); *State v. Poe*, 245 N.C. 402, 96 S.E.2d 5 (1957); *State v. Mills*, 246 N.C. 237, 98 S.E.2d 329 (1957); *Taylor v. Parks*, 254 N.C. 266, 118 S.E.2d 779 (1961).

**§ 18-12. Summons on citizens having interest in property.**—In all cases wherein the property of any citizen is proceeded against or wherein a judgment affecting it might be rendered, and the citizen is not the one who in person violated the provisions of the law, summons must be issued in due form and served personally, if said person is to be found within the jurisdiction of the court. (1923, c. 1, s. 11; C. S., s. 3411(k).)

**§ 18-13. Search warrants; disposal of liquor, equipment and materials seized.**—Upon the filing of a complaint under oath by a reputable citizen, or information furnished under oath by an officer charged with the execution of the law, before a justice of the peace, recorder, mayor, or other officer authorized by the law to issue warrants, that he has reason to believe that any person has in his possession, at a place or places specified, liquor for the purpose of sale, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, a warrant shall be issued commanding the officer to whom it is directed to search the place or places described in such complaint or information; and if such liquor, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, be found in any such place or places, to seize and take into his custody all such liquor, and to seize and take into his custody all glasses, bottles, jugs, pumps, bars, or other equipment used in the business of selling or manufacturing intoxicating liquor which may be found at such place or places, and to keep the same subject to the order of the court. The complaint or information shall describe the place or places to be searched with sufficient particularity to identify the same, and shall describe the intoxicating liquor or other property alleged to be used in carrying on the business of selling or manufacturing intoxicating liquor as particularly as practicable, and any description, however general, that will enable the officer executing the warrant to identify the property seized shall be deemed sufficient. All liquor, and all equipment or materials designed or intended for use in the manufacture of intoxicating liquor, seized under this section shall be held and shall upon the acquittal of the person so charged be returned to the established owner, and shall within ten days upon conviction or default of appearance of such person be destroyed: Provided that any tax-paid liquor so seized shall within ten days be turned over to the board of county commissioners, which shall within ninety days from the receipt thereof turn it over to hospitals for medicinal purposes, or sell it to legalized alcoholic beverage control stores within the State of North Carolina, the proceeds of such sale being placed in the school fund of the county in which such seizure was made, or



destroy it. (1923, c. 1, s. 12; C. S., s. 3411(1); 1939, c. 12; 1941, c. 310; 1957, c. 1235, s. 3.)

**Local Modification.**—Guilford: 1955, c. 141.

**Editor's Note.** — For comment on the 1941 amendment, see 19 N.C.L. Rev. 477.

For article discussing limits to search and seizure, see 15 N.C.L. Rev. 229. See also 15 N.C.L. Rev. 101.

For note on requisites for a valid warrant to search for unlawfully possessed liquor, see 35 N.C.L. Rev. 424 (1957).

**Legislative Intent.**—The statutes seem to indicate the legislative intent to be that liquor itself, when the subject of unlawful traffic and capable of harmful effects, offends the law and should be regarded as a nuisance and contraband, to be summarily destroyed or otherwise disposed of. Only in case of failure to establish a violation of the law is the restoration of the liquor permitted. However, the processes of the courts are available to anyone legally interested to present his claim for seized liquor, and his plea will be heard. *State v. Hall*, 224 N.C. 314, 30 S.E.2d 158 (1944).

**Hearing Contemplated.** — While § 18-6 provides only for a hearing in respect of the seized vehicle used in transporting intoxicating liquor contrary to law, because thereunder the liquor itself is to be destroyed, this section clearly contemplates a hearing in the criminal case to determine the "established owner" or rightful claimant. This remedy appears adequate and is approved. *State v. Gordon*, 225 N.C. 241, 34 S.E.2d 414 (1945).

**Clerk of Superior Court May Issue Warrant.**—The clerk of the superior court is an "other officer authorized by the law to issue warrants" within the meaning of this section. *State v. Brady*, 238 N.C. 407, 78 S.E.2d 129 (1953).

**And Deputy Clerk of Municipal Court.**—This section permits any officer authorized to issue warrants to issue a search warrant for the liquor therein specified, and thus, since § 7-198 so authorizes, the deputy clerk of a municipal court could issue a search warrant for illegal liquor. *State v. Mock*, 259 N.C. 501, 130 S.E.2d 863 (1963).

**Warrant Governed by This Section and Not by § 15-27.**—A warrant issued by a justice of the peace upon affidavit of an officer charged with the execution of the law, authorizing the search of the premises at a specified locality and the seizure

of all intoxicating liquors, is governed by this section and not by § 15-27. *State v. Brady*, 238 N.C. 404, 78 S.E.2d 126 (1953). See *State v. McLamb*, 235 N.C. 251, 69 S.E.2d 537 (1952).

**The effect of § 15-27.1** was to make the requirements of §§ 15-26 and 15-27 applicable to search warrants obtained under this section. *State v. Mock*, 259 N.C. 501, 130 S.E.2d 863 (1963).

Section 15-27.1 did not nullify this section, indeed, it recognized it as specifically applying to intoxicants. *State v. Mock*, 259 N.C. 501, 130 S.E.2d 863 (1963).

**Affidavit Sufficient to Justify Issuance of Warrant.** — See *State v. McLamb*, 235 N.C. 251, 69 S.E.2d 537 (1952).

Information radioed by one patrolman to another is sufficient information within the meaning of this section to authorize the second patrolman to make the affidavit and to authorize the clerk of a general county court to issue a search warrant. *State v. Banks*, 250 N.C. 728, 110 S.E.2d 322 (1959).

**Description of Premises.** — Where the affidavit upon which a search warrant is issued describes defendant's premises with sufficient definiteness to identify it, and such description is made a part of the search warrant by proper reference, objection to the search warrant on the ground that it did not describe the premises with sufficient definiteness, is untenable. *State v. Mills*, 246 N.C. 237, 98 S.E.2d 329 (1957).

**Warrant Held Sufficient Compliance with Section.** — See *State v. Brady*, 238 N.C. 404, 78 S.E.2d 126 (1953).

**Unlawful Search.** — A warrant for the search of defendant's dwelling at a certain locality, together with barn and outhouses, etc., does not authorize the officer to go into the home of another party, located on the adjoining lot, and search a room there rented by the defendant. *State v. Mills*, 246 N.C. 237, 98 S.E.2d 329 (1957), holding that defendant had not waived his right against the unlawful search of the room.

**Stated in** *State v. McMilliam*, 243 N.C. 771, 92 S.E.2d 202 (1956).

**Cited in** *State v. Gordon*, 224 N.C. 304, 30 S.E.2d 43 (1944); *State v. Rhodes*, 233 N.C. 453, 64 S.E.2d 287 (1951); *State v. Harrison*, 239 N.C. 659, 80 S.E.2d 481 (1954); *State v. Stevens*, 264 N.C. 737, 142 S.E.2d 588 (1965).

**§ 18-14. Grand jury, witnesses before; effect of evidence.**—When the solicitor of any judicial district has good reason to believe that liquor has been

manufactured or sold contrary to law within a county in his district, and believes that any person has knowledge of the existence and establishment of any illicit distillery, or that any person has sold liquor illegally, then it is lawful for the solicitor to apply to the clerk of the superior court of the county wherein the offense is supposed to have been committed to issue a subpoena for the person so having knowledge of said offense to appear before the next grand jury drawn for the county, there to testify upon oath what he may know touching the existence, establishment, and whereabouts of said distillery, or persons who have sold intoxicating liquor contrary to law, who shall give the names and personal description of the keepers thereof, and of any person who has sold liquor unlawfully; and such evidence, when so obtained, shall be considered and held in law as an information on oath upon which the grand jury shall make presentment, as provided by law in other cases. If any officer shall fail or refuse to use due diligence in the execution of the provisions of this section he shall be guilty of laches in office, and such failure be cause for removal from office. (1923, c. 1, s. 13; C. S., s. 3411(m).)

**§ 18-15. Clubrooms and other places for keeping, etc., of liquor.—**

No corporation, club, association, or person shall directly or indirectly keep or maintain, alone or by association with others, or by any other means, or shall in any manner aid, assist, or abet others in keeping or maintaining a clubroom or other place where intoxicating liquor is received, kept, or stored for barter, sale, exchange, distribution, or division among the members of any such club or association or aggregation of persons, or to or among any other persons by any means whatever, or shall act as agents in ordering, procuring, buying, storing, or keeping intoxicating liquor for any such purpose. (1923, c. 1, s. 14; C. S., s. 3411(n).)

**§ 18-16. Records of transportation companies; evidence.—**All express companies, railroad companies, or other transportation companies doing business in this State are required hereby to keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom liquor is shipped, the amount and kind received, and the date when received, the date when delivered, by whom delivered, and to whom delivered, after which record shall be a blank space, in which the consignee shall be required to sign his name, or, if he cannot write, shall make his mark in the presence of a witness, before such liquor is delivered to such consignee, and which book shall be open for inspection to any officer or citizen of the State, county, or municipality any time during business hours of the company, and such book shall constitute prima facie evidence of the facts therein and will be admissible in any of the courts of this State. Any express company, railroad company, or other transportation company, or any employee or agent of any express company, railroad company, or other transportation company violating the provisions of this section shall be guilty of a misdemeanor. (1923, c. 1, s. 15; C. S., s. 3411(o).)

**Editor's Note.**—See *State v. Seaboard Air Line Ry.*, 169 N.C. 295, 84 S.E. 283 (1915).

**§ 18-17. Indictments; allegations of sale; circumstantial evidence.**—In indictments for violating any provisions of this article it shall not be necessary to allege a sale to a particular person, and the violation of law may be proved by circumstantial evidence as well as by direct evidence. (1923, c. 1, s. 16; C. S., s. 3411(p).)

**Editor's Note.**—The cases which follow were decided under a similar section, C.S. § 3383, which has been superseded by this section.

**Evidence—Sale to Unknown Persons.**—To convict under an indictment of sale of intoxicating liquors "to some person to the jurors unknown," it is as necessary to offer

evidence of an actual sale to the unknown person as if his name had been inserted in the indictment. *State v. Watkins*, 164 N.C. 425, 79 S.E. 619 (1913).

**Same—Other Sales.**—The rule of evidence that one illegal sale of intoxicating liquors should not be received as any evidence that another such sale had been made, applies where the sales are entirely separated and distinct transactions, the one having no fair or reasonable tendency to establish the other, but inapplicable when it tends to show that the defendant, accused of violating the prohibition law at a certain city number, with evidence tending to show such violation there, kept the spirituous liquor elsewhere in the city, or under his control, for the purpose of making illegal sales. *State v. Boynton*, 155 N.C. 456, 71 S.E. 341 (1911).

**Same—Liquors on Hand.**—Upon trial on indictment for the sale of intoxicating liquors at a certain city number, testimony that the accused had and kept liquors on hand in other portions of the city is a relevant circumstance tending to show that he had it on hand and was prepared and equipped to make the illegal sale charged in the bill of indictment, and to be considered by the jury with other evidence tending to show that he had sold such liquor at the place charged in the indictment. *State v. Boynton*, 155 N.C. 456, 71 S.E. 341 (1911).

Upon indictment for violating the pro-

hibition law, the possession of liquors by the accused, at the time of the offense charged, is always a circumstance admissible against him, and in general the circumstances under which liquors are kept, and even that they are kept at other places or in other rooms, may be shown. *State v. Boynton*, 155 N.C. 456, 71 S.E. 341 (1911).

**Same—Photographs.**—Photographs are admissible in evidence. It has always been permissible to use diagrams in the trial of causes, both civil and criminal, and especially in the latter class to use diagrams, if shown to be correct, to illustrate the position of persons and places and to better enable the witnesses to properly locate them. If, then, a diagram may be used for such a purpose, there is no good reason why a photograph may not be, by which is presented to view everything within the range of the camera at the time the photograph was taken. *State v. Jones*, 175 N.C. 709, 95 S.E. 576 (1918).

**Same — Conversation between Accused and Wife.**—Where the husband is on trial for violating the prohibition law, it is competent for a third person to testify as to the conversation between the defendant and his wife, with statements by the latter tending to fix the former with guilt of the offense charged. *State v. Randall*, 170 N.C. 757, 87 S.E. 227 (1915).

**Stated in** *State v. Bisette*, 250 N.C. 514, 108 S.E.2d 858 (1959).

**§ 18-18. Serving liquor with meals.**—It is unlawful for any person to serve with meals, or otherwise, any liquor or intoxicating bitters, where any charge is made for such meal or service. (1923, c. 1, s. 17; C. S., s. 3411(q).)

**Editor's Note.**—See *Felia v. Betton*, 170 N.C. 112, 86 S.E. 999 (1915).

**§ 18-19. Sale by druggists or pharmacists.**—It is unlawful for any druggist or pharmacist to sell, or otherwise dispose of for gain, any intoxicating liquor. (1923, c. 1, s. 18; C. S., s. 3411(r).)

**§ 18-20. Grain alcohol for use in medicine or surgery; manufacture or sale of cider.**—The provisions of this article shall not apply to grain alcohol, received by duly licensed physicians, druggists, dental surgeons, college, university, and State laboratories, and manufacturers of medicine, when intended to be used in compounding, mixing, or preserving medicines or medical preparations, or for surgical purposes, when obtained as hereinbefore provided: Provided, however, that nothing contained in this article shall prohibit the importation into the State of North Carolina and the delivery and possession in the State for use in industry, manufactures, and arts of any denatured alcohol or other denatured spirits which are compounded and made in accordance with the formulae prescribed by acts of Congress of the United States and regulations made under authority thereof by the Treasury Department of the United States and the Commissioner of Internal Revenue thereof, and which are not now subject to internal revenue tax levied by the government of the United States: Provided further,



that this article shall not apply to wines and liquors required and used by hospitals or sanatoriums bona fide established and maintained for the treatment of patients addicted to the use of liquor, morphine, opium, cocaine, or other deleterious drugs, when the same are administered to patients actually in such hospitals or sanatoriums for treatment, and when the same are administered as an essential part of the particular system or method of treatment and exclusively by or under the direction of a duly licensed and registered physician of good moral character and standing: Provided, further, that this article shall not prohibit the manufacture or sale of cider or vinegar. (1923, c. 1, s. 19; C. S., s. 3411(s).)

**§ 18-21. Wine for sacramental purposes.**—It is lawful for any ordained minister of the gospel who is in charge of a church and at the head of a congregation in this State to receive in the space of ninety consecutive days a quantity of vinous liquor not greater than five gallons, for use in sacramental purposes only, and it shall be lawful for him to receive same in one or more packages or one or more receptacles. (1923, c. 1, s. 20; C. S., s. 3411(t); 1935, c. 114.)

**§ 18-22. Sheriffs and police to search for and seize distilleries; confiscation; disposal of property.**—It is the duty of the sheriff of each county in the State and of the police of each incorporated town or city in the State to search for and seize any distillery or apparatus used for the manufacture of intoxicating liquor in violation of the laws of North Carolina, and to deliver same, with any materials used for making such liquor found on the premises, to the board of county commissioners, who shall confiscate the same and shall cause the distillery to be cut up and destroyed, in their presence or in the presence of a committee of the board, and who may dispose of the material, including the copper or other material from the destroyed still or apparatus, in such manner as they may deem proper. (1923, c. 1, s. 21; C. S., s. 3411(u).)

**Cited in** *State v. Taft*, 256 N.C. 441, 124 S.E.2d 169 (1962).

**§ 18-23. Destruction of liquor at distillery; persons arrested.**—It is the duty of the sheriff and other officers mentioned in § 18-22 to seize and then and there destroy any and all liquor which may be found at any distillery for the manufacture of intoxicating liquor in violation of law, and to arrest and hold for trial all persons found on the premises engaged in distilling or aiding or abetting in the manufacture or sale of intoxicating liquor. (1923, c. 1, s. 22; C. S., s. 3411(v).)

**Arrest without Warrant.**—An alcoholic beverage control officer who saw defendant at the still unlawfully engaged in the manufacture of whiskey had a lawful

right to arrest defendant there without a warrant. *State v. Taft*, 256 N.C. 441, 124 S.E.2d 169 (1962).

**§ 18-24. Laches of officers; removal from office.**—If any officer mentioned in §§ 18-22, 18-23, shall fail or refuse to use diligence in the execution of the provisions of such sections, after being informed of violation thereof, he shall be guilty of laches in office, and such failure shall be cause for removal therefrom. (1923, c. 1, s. 23; C. S., s. 3411(w).)

**Cross Reference.**—As to removal of officers, see § 126-16.

**§ 18-25. Rewards for seizure of still.**—For every distillery seized under this article the sheriff or other police officer shall receive such sum as the board of county commissioners of the county in which the seizure was made shall, in the discretion of such board, allow, which sum shall not be less than five dollars nor more than twenty dollars: Provided, that the commissioners shall not pay any amount if they are satisfied, after due investigation, that the seizure of the distillery was not bona fide made: Provided further, that when the sheriff of a

county captures a distillery he shall receive the fee for his own use, regardless of whether he be on fees or salary. (1923, c. 1, s. 24; C. S., s. 3411(x).)

**Local Modification.** — Sheriff's fees for seizure of stills were prior to 1923 regulated by C.S. §§ 3401, 3402. Section 18-25 (this section), part of the Turlington Act, would seem to supersede C.S. §§ 3401, 3402, and Public Laws 1933, c. 480, specifically repealed C.S. §§ 3401, 3402, except in three counties. However, many local laws have been passed with reference to C.S. § 3401, as well as to §§ 18-25 (this section) and 18-26. Citations to all these laws which have been discovered are listed here, not as a statement of the present status of the law in any county, but merely as an aid in tracing down the fees in the counties named.

These citations are: Alamance, Avery, Caswell, Chowan, Graham, Greene, Jackson, Northampton, Surry, Wilson, Yadkin: C.S. §§ 3401, 3402; 1933, c. 480; Anson: 1937, c. 442; Burke: 1933, c. 136; Haywood, Lincoln, Pitt, Transylvania: C.S. § 3909; Ex. Sess. 1908, c. 97; Pub. Loc. 1919, c. 30; Lenoir: 1933, c. 246; Moore: 1933, c. 246; 1935, c. 253; Nash: 1931, c. 91; Surry: 1925, c. 173; Union: Pub. Loc. 1933, c. 160; Warren: 1933, c. 230.

Montgomery County was exempted from this section by Session Laws 1949, c. 68.

**§ 18-26. Same—In certain counties.**—The board of commissioners of the several counties in the State, hereinafter named, shall pay by way of reward to the sheriff or other officers in the various counties for the capture and destruction of stills used in the manufacture of spirituous liquors, the sum of twenty dollars (\$20.00) and no more, upon the production of a certificate from the clerk of the superior court or other court having final jurisdiction, that one or more operators of the still captured and destroyed were by the sheriff or other officer apprehended, captured and have been convicted and that no appeal has been taken from the judgment rendered, which said twenty dollars (\$20.00) shall be in lieu of any and all other rewards authorized by law to be paid for the capture and destruction of stills to the sheriff or other officers in the counties hereinafter named.

This section shall apply to the following counties only: Alleghany, Ashe, Avery, Beaufort, Bladen, Buncombe, Caswell, Catawba, Chowan, Craven, Duplin, Forsyth, Hoke, Hyde, Lee, Lenoir, Lincoln, Mecklenburg, New Hanover, Onslow, Pamlico, Pender, Perquimans, Richmond, Rockingham, Sampson, Scotland, Vance, Wake, Washington, Watauga, Wilkes, Wilson and Yancey. (1927, c. 42; Pub. Loc. 1933, c. 160; 1947, c. 207.)

**Local Modification.**—Scotland: 1951, c. 193.

**§ 18-27. Officers given power to compel evidence; effect of evidence; process; immunity to witnesses.**—When any justice of the peace, magistrate, recorder, mayor of a town, or judge of the superior courts or Supreme Court shall have good reason to believe that any person within his jurisdiction has knowledge of the unlawful sale of liquor or the existence and establishment of any place where intoxicating liquor is sold or manufactured contrary to law, in any town or county within his jurisdiction, such person not being minded to make voluntary information thereof on oath, then it shall be lawful for such justice of the peace, magistrate, recorder, mayor, or judge to issue to the sheriff of the county or to any constable of the town or township in which such place where intoxicating liquor is sold or manufactured contrary to law is supposed to be, a subpoena, *capias ad testificandum*, or other summons in writing, commanding such person to appear immediately before such justice of the peace, magistrate, recorder, mayor, or judge, and give evidence on oath as to what he may know touching the existence, establishment, and whereabouts of such place where intoxicating liquor is sold or manufactured contrary to law, and the name and personal description of the keeper thereof, or person selling or manufacturing liquor. Such evidence, when obtained, shall be considered and held in law as an information



under oath, and the justice, magistrate, recorder, mayor, or judge may thereupon proceed to seize and arrest such keeper or person selling, manufacturing, or having liquor contrary to law, and issue such process as is provided by law. No discovery made by the witness upon such examination shall be used against him in any penal or criminal prosecution, and he shall be altogether pardoned of the offense so done or participated in by him. (1923, c. 1, s. 25; C. S., s. 3411(y).)

**Cross Reference.**—As to testimony enforced in criminal investigations, immunity, see § 8-55.

**§ 18-28. Distilling or manufacturing liquor; first offense misdemeanor.**—It is unlawful for any person to distill, manufacture, or in any manner make, or for any person to aid, assist, or abet any such person in distilling, manufacturing, or in any manner making any spirituous or malt liquors or intoxicating bitters within the State of North Carolina. Any person or persons violating the provisions of this section shall, for the first conviction, be guilty of a misdemeanor and, upon conviction or confession of guilt, punished in the discretion of the court; for the second or any subsequent conviction, said person or persons shall be guilty of a felony, and upon conviction or confession in open court shall be imprisoned in the State prison for not less than four months and not exceeding five years, in the discretion of the court. (1923, c. 1, s. 26; C. S., s. 3411(z).)

**Process of Manufacturing Need Not Be Complete.**—It is not necessary for a conviction under the provisions of Public Laws 1917, c. 157, similar to those of this section, making the distilling or manufacturing, etc., of spirituous or malt liquors or intoxicating bitters within the State unlawful, including within its express terms those who aid, assist, or abet therein, that the liquor should have been actually manufactured or the product finished; and where there is evidence tending to show that such manufacture had been in progress, but had been suspended by the arrest of the prisoner, and that he was aiding or assisting therein, it is sufficient to be submitted to the jury and to sustain conviction of the offense charged. *State v. Horner*, 174 N.C. 788, 94 S.E. 291 (1917).

**When Question for Jury.**—Where there is evidence of defendant's guilty knowledge in aiding in the distilling or manufacturing of intoxicating liquor prohibited by Public Laws 1917, c. 157, similar to this section, by hauling it away, and also consistent with his innocence in merely hauling away the remnants after the illegal purpose had been accomplished or frustrated, without intention of taking part or aiding in its manufacture, the question of his guilt or innocence is one for the jury, under proper instructions. *State v. Horner*, 174 N.C. 788, 94 S.E. 291 (1917).

**Second Degree.**—Upon a charge in an indictment for manufacturing liquor, etc., the defendant may be convicted of the second degree of the offense—i.e., aiding or

abetting its manufacture. *State v. Horner*, 174 N.C. 788, 94 S.E. 291 (1917).

**Accessories Equally Guilty.**—The defendant, guilty of aiding and abetting the unlawful manufacture of liquor, is equally guilty with those who actually operated the still. *State v. Clark*, 183 N.C. 733, 110 S.E. 641 (1922).

The appellant, convicted on his trial of aiding or abetting in the manufacture of whiskey on one count of the indictment may not complain because he was tried on another count of the same bill for the unlawful manufacture of liquor and acquitted, there being sufficient evidence to sustain a conviction on each one. *State v. Smith*, 183 N.C. 725, 110 S.E. 654 (1922).

**Presumption Regarding Previous Conviction.**—The first conviction of manufacturing or aiding and abetting in the manufacture of spirituous, etc., liquors is a misdemeanor, and the second is a felony; and where the indictment does not charge a previous conviction it will be presumed that the defendant has not heretofore been convicted of the offense charged. *State v. Clark*, 183 N.C. 733, 110 S.E. 641 (1922).

It was proper to reject evidence as to the quantity of cotton or corn defendant, tried for unlawful manufacture of liquor, etc., had raised on his farm that year. *State v. Smith*, 183 N.C. 725, 110 S.E. 654 (1922).

**Evidence Sufficient for Conviction.**—See *State v. McMillan*, 180 N.C. 741, 105 S.E. 403 (1920); *State v. Smith*, 183 N.C. 725, 110 S.E. 664 (1922); *State v. Grier*, 184 N.C. 723, 114 S.E. 622 (1922).

**Indictment.**—The second offense of



manufacturing spirituous liquor is a felony and a person may be tried on a charge of manufacturing spirituous liquor for the second offense only upon indictment, since the offense is a felony. *State v. Sander-son*, 213 N.C. 381, 196 S.E. 324 (1938).

Cited in *State v. Clegg*, 214 N.C. 675, 200 S.E. 371 (1939); *State v. Graham*, 224 N.C. 351, 30 S.E.2d 154 (1944); *State v. Taft*, 256 N.C. 441, 124 S.E.2d 169 (1962).

**§ 18-29. Misdemeanor; punishment; effect of previous punishment by federal court.**—Any person violating any of the provisions of this article, except as otherwise specified in this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court: Provided, that no person shall be punished who has been previously punished for the same offense by a federal court. (1923, c. 1, s. 27; C. S., s. 3411(aa).)

A violation of this section is a crime separate and distinct from a violation of §§ 18-2, 18-48 and 18-50. *State v. Simmons*, 256 N.C. 688, 124 S.E.2d 887 (1962).

Cited in *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**§ 18-30. Laws repealed; local laws.**—All laws in conflict with this article are hereby repealed, but nothing in this article shall operate to repeal any of the local acts of the General Assembly of North Carolina prohibiting the manufacture or sale or other disposition of any liquor mentioned in this article, or any laws for the enforcement of the same, but all such acts shall continue in full force and effect and in concurrence herewith, and indictment or prosecution may be had either under this article or under any local act relating to the same subject. (1923, c. 1, s. 28; C. S., s. 3411(bb).)

**Editor's Note.** — See *State v. Johnson*, 170 N.C. 685, 86 S.E. 788 (1915).

## ARTICLE 2.

### *Miscellaneous Regulations.*

**§ 18-31. Unlawful sale through agents.**—If any person unlawfully and illegally procures and delivers any spirituous or malt liquors to another, he shall be deemed and held in law to be the agent of the person selling said spirituous and malt liquors, and shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1905, c. 498, ss. 6, 7, 8; Rev., ss. 3526, 3534; C. S., s. 3371.)

**Local Modification.**—Polk: 1951, c. 750.

**What Constitutes Agent.** — Revisal, § 3534, now this section, making it unlawful for anyone to procure for and deliver spirituous liquors to another, and making such person, in law, the agent of the seller and punishable, though its meaning is not plain, makes the one procuring liquor by purchase from an illicit dealer, and delivering it to another, the agent of the seller, and subjects him to the punishment prescribed therein, as a principal in the misdemeanor. *State v. Burchfield*, 149 N.C. 537, 63 S.E. 89 (1908).

If one buys whiskey for another from an illicit dealer in prohibited territory, without being interested in the sale otherwise than as agent of the purchaser, to whom he delivers it, and pays the money to the seller for the buyer, it is a wrongful procuring of the whiskey for another within the meaning of Revisal, § 3534, now this section, and his testimony, that he was acting solely as agent for the buyer, cannot change the character of the act from that intended by the statute. *State v. Burchfield*, 149 N.C. 537, 63 S.E. 89 (1908).

**§ 18-32. Keeping liquor for sale; evidence.**—It is unlawful for any person, firm, association or corporation, by whatever name called, to have or keep in possession, for the purpose of sale, except as otherwise authorized by law, any spirituous, vinous or malt liquors, and proof of any one of the following facts shall constitute prima facie evidence of the violation of this section:

- (1) The possession of a license from the government of the United States to sell or manufacture intoxicating liquors; or
- (2) The possession of more than one gallon of spirituous liquors at any one time, whether in one or more places; or
- (3) The possession of more than one gallon of wine at any one time, whether in one or more places; or
- (4) The possession of more than five gallons of malt liquors at any one time, whether in one or more places; provided, however, that in those areas in which malt beverages may be sold legally the amount referred to in this subdivision shall be 15½ gallons of draft malt beverages rather than 5 gallons; or
- (5) The delivery to such person, firm, association or corporation of more than five gallons of spirituous or vinous liquors, or more than twenty gallons of malt liquors within any four successive weeks, whether in one or more places; or
- (6) The possession of intoxicating liquors as samples to obtain orders thereon: Provided, that this section shall not prohibit any person from keeping in his possession wines and ciders in any quantity where such wines and ciders have been manufactured from grapes or fruit grown on the premises of the person in whose possession such wines and ciders may be. (1913, c. 44, s. 2; 1915, c. 97, s. 8; C. S., s. 3379; 1949, c. 1251, s. 2; 1963, c. 932.)

**Local Modification.**—Polk: 1951, c. 750.

**Editor's Note.**—See 13 N.C.L. Rev. 315.

The 1963 amendment inserted the proviso in subdivision (4).

**Constitutionality.**—The section is constitutional and valid. *State v. Randall*, 170 N.C. 757, 87 S.E. 227 (1915); *State v. Langley*, 209 N.C. 178, 183 S.E. 526 (1936).

It is not in contravention of the federal Constitution. *State v. Brown*, 170 N.C. 714, 86 S.E. 1042 (1915).

For cases holding that this section was unaffected by P. L. 1935, cc. 418, 493, see *State v. Jones*, 209 N.C. 49, 182 S.E. 699 (1935); *State v. Langley*, 209 N.C. 178, 183 S.E. 526 (1936); *State v. Tate*, 210 N.C. 168, 185 S.E. 665 (1936).

**"Prima Facie Evidence" Defined.**—The words "prima facie evidence" are defined in Webster's International Dictionary as meaning "evidence sufficient, in law, to raise a presumption of fact or establish the fact in question, unless rebutted." It must presume that the legislature had such meaning in mind when such words were used in the statute. *State v. Russell*, 164 N.C. 482, 80 S.E. 66 (1913).

**Section Harmonizes with § 18-11.**—The provisions of § 18-11 are subjective in character, and harmonize with the prima facie rule of evidence as to possession of more than one gallon of spirituous liquors as contained in this section. *State v. Sudreth*, 223 N.C. 610, 27 S.E.2d 623 (1943).

**Effect of the Presumption.**—This (prima facie evidence) neither conclusively determines the guilt or innocence of the party

who is accused nor withdraws from the jury the right and duty of passing upon and deciding the issue to be tried. The burden of proof remains continually upon the State to establish the accusation which it makes, as prima facie evidence does not change or shift the burden. *State v. Russell*, 164 N.C. 482, 80 S.E. 66 (1913).

**Same—Sufficient to Sustain Verdict.**—While the prima facie case, unexplained, is sufficient to sustain a verdict of guilty, yet the defendant is not required to show, by the greater weight of evidence, that the whiskey was in his possession for lawful purposes, for such, in effect, would require him to establish his own innocence, and relieve the State of the burden of the issue, which is placed upon it. *State v. Wilkerson*, 164 N.C. 431, 79 S.E. 888 (1913).

**Same—Power of Legislature to Change Rule of Evidence.**—See full discussion in *State v. Wilkerson*, 164 N.C. 431, 79 S.E. 888 (1913).

**Burden of Proof.**—The possession of the specified quantity of spirituous liquors sufficient to make out prima facie evidence of an unlawful purpose is only sufficient to sustain a verdict of guilty, and does not shift the burden upon the defendant to show his innocence, and an instruction to that effect is reversible error. *State v. Helms*, 181 N.C. 566, 107 S.E. 228 (1921).

Where the possession of the specified quantities of intoxicating liquors under a statutory provision has made out prima facie evidence of guilt, and the defendant has not introduced evidence, an instruction to the jury placing the burden on the de-

fendant to establish his innocence is reversible error, being equivalent to directing a verdict, which is not permissible in a criminal case. *State v. Helms*, 181 N.C. 566, 107 S.E. 228 (1921).

**United States Government License as Defense.**—For cases under the former law, see *State v. Dowdy*, 145 N.C. 432, 58 S.E. 1002 (1907); *State v. Boynton*, 155 N.C. 456, 71 S.E. 341 (1911); *Pfeifer v. Love's Drug Co.*, 171 N.C. 214, 88 S.E. 343 (1916).

**Possession Means Actual or Constructive.**—This section making the "possession of certain specified quantities of spirituous, vinous, or malt liquors" prima facie evidence of its violation, intends that the "possession" shall be construed as either actual or constructive; so that the possession of such quantities by the agent will be deemed the possession of the principal for the purpose of the act. *State v. Lee*, 164 N.C. 533, 80 S.E. 405 (1913); *State v. Buchanan*, 233 N.C. 477, 64 S.E.2d 549 (1951).

Possession within the meaning of this section, may be either actual or constructive. *State v. Rogers*, 252 N.C. 499, 114 S.E.2d 355 (1960).

If the liquor was within the power of the defendant, in such a sense that he could and did command its use, the possession was as complete within the meaning of the statute as if his possession had been actual. *State v. Buchanan*, 233 N.C. 477, 64 S.E.2d 549 (1951).

If nontax-paid whiskey is on a person's premises with his knowledge and consent, he has constructive possession thereof while it remains on premises under his exclusive control. *State v. Thompson*, 256 N.C. 593, 124 S.E.2d 728 (1962).

The possession of the agent, for the one accused of violating the State prohibition law, of more than one gallon of intoxicating liquor is sufficient to make out a prima facie case of guilt, under the provisions of this section. *State v. Blauntia*, 170 N.C. 749, 87 S.E. 101 (1915).

**Possession for Use of Owner.**—The mere possession of spirituous liquor in the home for the use of the owner, his family and their guests on the premises in the absence of a count in the indictment charging that it was for prohibited purposes, is not made unlawful by the State prohibition statutes. *State v. Mull*, 193 N.C. 668, 137 S.E. 866 (1927).

**Evidence.**—Where there is evidence that the defendant, indicted under this section had in his possession sufficient spirituous liquors to raise the prima facie presumption that it was for the purpose of sale, it

is competent to show this intent, and in furtherance of the presumption, that soon thereafter, about two months, he was found working on a copper still on his premises, and had copper enough to make two of them; and that, upon his premises being searched, he had falsely denied the possession and had attempted to shoot the officer making the search. *State v. Simons*, 178 N.C. 679, 100 S.E. 239 (1919).

Evidence that over a gallon of whiskey in pint bottles with unbroken seals was found on defendant's premises, that defendant admitted owning the whiskey, and that empty whiskey bottles were found around premises, is held sufficient to be submitted to the jury on a charge of illegal possession of intoxicating liquor for the purpose of sale. *State v. Libby*, 213 N.C. 662, 197 S.E. 154 (1938).

In a criminal prosecution, charging defendant with the possession of whiskey for purpose of sale, where the State's evidence showed the presence of four tax-paid, unbroken bottles, containing less than a gallon of whiskey, in the cabin of defendant near his filling station, and four other tax-paid, unbroken bottles, containing four fifths of a gallon in another cabin nearby on defendant's premises, occupied by a woman who claimed these four bottles as her own purchase for her own use, the evidence was insufficient to make out a prima facie case. *State v. Watts*, 224 N.C. 771, 32 S.E.2d 348 (1944).

In a prosecution for unlawful possession of intoxicating liquor for the purpose of sale, where the evidence is that a quantity of beer less than five gallons and less than one gallon of gin was found in the house of defendants, no presumption arises thereupon against defendants. *State v. Harrelson*, 245 N.C. 604, 96 S.E.2d 867 (1957).

The evidence was sufficient to carry the case to the jury on the charge of unlawful possession of whiskey and beer for the purpose of sale. *State v. Mills*, 246 N.C. 237, 98 S.E.2d 329 (1957).

**Possession of More than Gallon Is Prima Facie Evidence of Possession for Purpose of Sale.**—The possession of more than one gallon of intoxicating liquor is prima facie evidence of possession for the purpose of sale under this section, and is sufficient to take the case to the jury on the issue. *State v. Tate*, 210 N.C. 168, 185 S.E. 665 (1936).

But evidence establishing defendant's possession of more than a gallon of intoxicating liquor, without other incriminating evidence, is insufficient to support a directed



verdict of guilty of possession of intoxicating liquor for the purpose of sale under this section. *State v. Ellis*, 210 N.C. 166, 185 S.E. 663 (1936).

**Sufficient Evidence to Submit Question of Possession to Jury.**—Evidence that officers found a funnel, a number of containers, and glasses smelling of whiskey, in different places on defendant's premises, is held sufficient to be submitted to the jury in a prosecution on a charge of having possession of intoxicating liquor for the purpose of sale, although the amount of whiskey discovered was insufficient to invoke the presumption under subdivision (2) of this section. *State v. Rhodes*, 210 N.C. 473, 187 S.E. 553 (1936).

The defendant was convicted of having liquor in his possession for the purpose of sale in violation of this section. He appealed on the ground that the statute was repealed by the Eighteenth Amendment to the Constitution of the United States. The court sustained the conviction. *State v. Campbell*, 182 N.C. 911, 110 S.E. 86 (1921).

**Evidence Sufficient to Make Out Prima Facie Case against Defendant.**—See *State v. Buchanan*, 233 N.C. 477, 64 S.E.2d 549 (1951).

**Evidence Sufficient to Support Adverse Verdict.**—Evidence in *State v. Gordon*, 224 N.C. 304, 30 S.E.2d 43 (1944), held amply sufficient to support an adverse verdict without resort to any statutory presumption, as provided in this section.

**Instructions.**—Where an instruction, that "the possession of more than one gallon of liquor constitutes prima facie evidence of unlawful possession for the purpose of sale in violation of § 18-32," is directed to a count charging unlawful possession for the purpose of sale, and defendant is convicted

on that count and on two other counts of unlawful possession, and sentences imposed run concurrently, conceding the charge to be erroneous, it cannot avail defendant, who must show error affecting the whole case. *State v. Gordon*, 224 N.C. 304, 30 S.E.2d 43 (1944).

**Allegation That Whiskey Did Not Contain A.B.C. Stamp Regarded as Surplusage.**—In an indictment sufficiently charging possession of liquor for the purpose of sale under this section an additional allegation that the whiskey did not bear the stamp of the A.B.C. board of the county is an allegation of a nonessential fact, and will be regarded as surplusage. *State v. Atkinson*, 210 N.C. 661, 188 S.E. 73 (1936).

**Effect of Turlington Act.**—The Turlington Act repeals all conflicting laws and makes the possession of any intoxicating liquors for the purpose of sale unlawful, unless such liquors are for the private use and in the residence of the possessor; and the prior statute making the possession of more than one gallon thereof prima facie evidence of the purpose of unlawful sale is not in conflict therewith or repealed thereby. *State v. Foster*, 185 N.C. 674, 116 S.E. 561 (1923).

**Applied in** *State v. Potter*, 185 N.C. 742, 117 S.E. 504 (1923); *State v. Epps*, 213 N.C. 709, 197 S.E. 580 (1938); *State v. Miller*, 246 N.C. 608, 99 S.E.2d 795 (1957).

**Stated in** *State v. Peterson*, 226 N.C. 255, 37 S.E.2d 591 (1946).

**Cited in** *State v. Scoggins*, 199 N.C. 821, 155 S.E. 927 (1930); *State v. Lockey*, 214 N.C. 525, 199 S.E. 715 (1938); *State v. Merritt*, 231 N.C. 59, 55 S.E.2d 804 (1949); *State v. Scoggin*, 236 N.C. 19, 72 S.E.2d 54 (1952).

**§ 18-33. Unlawful to handle draft connected with receipt for liquor.**—It is unlawful for any bank incorporated under the laws of this State, or national bank, or any individual, firm or association, to present, collect or in any wise handle any draft, bill of exchange or order to pay money, to which draft, bill of exchange or order to pay money is attached a bill of lading, or order, or receipt for intoxicating liquors, or which draft is enclosed with, connected with, or in any way related to, directly or indirectly, any bill of lading, order, or receipt for intoxicating liquors. Provided, this section shall not apply to such instruments issued in connection with the sale or purchase of intoxicating liquors when such sale or purchase is not prohibited by the laws of this State. (1913, c. 44, s. 4; C. S., s. 3381.)

**Local Modification.**—Polk: 1951, c. 750.

**Cross Reference.**—As to bills of lading generally, see § 21-1 et seq.

**§ 18-34. Allowing distillery to be operated on land.**—If any person shall knowingly permit or allow any distillery or other apparatus for the making or distilling of spirituous liquors to be set up for operation or to be operated on

lands in his possession or control, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1905, c. 498, s. 2; Rev., s. 3533; C. S., s. 3407.)

**Local Modification.**—Polk: 1951, c. 750.

**Editor's Note.**—See *State v. Jones*, 175 N.C. 709, 95 S.E. 576 (1918).

§ 18-35. **Federal license as evidence.**—The possession of a license or the issuance to any person of a license to manufacture, rectify or sell, at whole-sale or retail, spirituous liquors by the United States government or any officer thereof in any county, city or town where the manufacture, sale or rectification of spirituous liquors is forbidden by the laws of this State shall be prima facie evidence that the person having such license, or to whom the same was issued, is guilty of doing the act permitted by such license in violation of the laws of this State. On the trial of any person charged with the violation of any such laws, it shall be competent to prove that such a license is in the possession of or has been issued to such person, by the testimony of any witness who has personally examined the records of the government office where the official record of such licenses is kept. (1905, c. 339, s. 5; Rev., s. 2060; 1907, c. 931; C. S., s. 3408.)

**Local Modification.**—Polk: 1951, c. 750.

as prima facie evidence of keeping liquor

**Cross Reference.**—As to federal license for sale, see § 18-32.

§ 18-35.1. **Unlawful to obtain, possess, etc., federal license to manufacture, purchase or handle intoxicating liquor.**—It is unlawful for any person, firm, partnership, or corporation to procure, obtain, possess, purchase, permit to be issued, or to have issued to any person a license, permit stamp or other authorization from the government of the United States to manufacture, sell, possess, transport, handle or purchase intoxicating liquors in the State of North Carolina; and upon conviction or confession any such person, firm, partnership, or corporation shall be guilty of a misdemeanor punishable in the discretion of the court: Provided, this section shall not apply to the Department of Defense and agencies of the armed services operating thereunder, nor to any agency, department, official or agent of the State of North Carolina or any other person or persons engaged in any activity or transactions authorized under the Beverage Control Act of 1939 as amended or alcoholic beverage control laws of this State. (1951, c. 1025.)

### ARTICLE 3.

#### *Alcoholic Beverage Control Act of 1937.*

§ 18-36. **Purposes of article.**—The purpose and intent of this article is to establish a system of control of the sale of certain alcoholic beverages in North Carolina, and to provide the administrative features of the same, in such a manner as to insure, as far as possible, the proper administration of the sale of certain alcoholic beverages under a uniform system throughout the State. (1937, c. 49, s. 1.)

**The Alcoholic Beverage Control Act is of state-wide operation but does not repeal the Turlington Act,** which remains in full force except as modified by the A.B.C. Act. *State v. Barnhardt*, 230 N.C. 223, 52 S.E.2d 904 (1949). See note to § 18-1.

The alcoholic beverage control acts do not repeal the provisions of the Turlington Act in regard to the possession and transportation of intoxicating liquors except insofar as the control acts are inconsistent with the Turlington Act. *State v. Carpenter*, 215 N.C. 635, 3 S.E.2d 34 (1939).

**The Two Acts Are Construed in Pari Materia.**—When a warrant or bill of indictment, which charges the unlawful possession and unlawful transportation of intoxicating liquor, describes the liquor as "non-tax paid," conviction may be had, as the evidence may warrant, either under the Alcoholic Beverage Control Act, or under the Turlington Act. These statutes are construed in *pari materia*. *State v. Tillery*, 243 N.C. 706, 92 S.E.2d 64 (1956).

The Alcoholic Beverage Control Act and the Turlington Act must be construed

together. *State v. May*, 248 N.C. 60, 102 S.E.2d 418 (1958).

**Prima Facie Evidence of Possession for Purpose of Sale.**—Where a person has in his possession so-called tax-paid intoxicating liquors in quantity not in excess of one gallon in his private dwelling in a county in which the sale of such intoxicating liquors is not authorized under and by virtue of the Alcoholic Beverage Control Act, nothing else appearing, such possession is not now prima facie evidence that such intoxicating liquors are possessed by such person for the purpose of being sold, and such prima facie rule of evidence, prescribed by § 18-11, is in irreconcilable con-

flict with the provisions of this article, and to such extent is repealed thereby. *State v. Suddreth*, 223 N.C. 610, 27 S.E.2d 623 (1943).

**Applied in** *State v. Davis*, 214 N.C. 787, 199 S.E. 927 (1939).

**Cited in** *State v. Epps*, 213 N.C. 709, 197 S.E. 580 (1938); *Bailey v. Bryson*, 214 N.C. 212, 198 S.E. 622 (1938); *Hunter v. Board of Trustees*, 224 N.C. 359, 30 S.E.2d 384 (1944); *State v. Holbrook*, 228 N.C. 582, 46 S.E.2d 842 (1948); *State v. Taylor*, 236 N.C. 130, 71 S.E.2d 924 (1952); *Fulton v. City of Morganton*, 260 N.C. 345, 132 S.E.2d 687 (1963).

**§ 18-37. State Board of Alcoholic Control created; membership; appointed by Governor; chairman; terms; compensation; meetings.**—A State Board of Alcoholic Control is hereby created and shall consist of five members. The members shall be men well known for their character, ability, business acumen and success. The Governor shall appoint the members of the Board and, from those appointed, the Governor shall name one as chairman of the State Board of Alcoholic Control. The chairman and two members shall be appointed for a term of six years. Two members shall be appointed for a term of four years. The term of each member shall begin on the first day of July in the year of appointment.

The chairman and members shall receive no compensation, but shall be allowed the same per diem, subsistence and travel allowances as members of other State boards and commissions, as provided in chapter 138 of the General Statutes.

The State Board of Alcoholic Control shall not transact any official business unless a quorum, consisting of the chairman and two members, is present. The chairman shall be the executive officer of the Board and shall execute all orders, rules and regulations established by the Board. The Board may meet at the call of the chairman or any three members of the Board. (1937, c. 49, s. 2; c. 411; 1939, c. 185, s. 5; 1941, c. 107, s. 5; 1965, c. 1102, s. 1.)

**Editor's Note.** — The 1965 amendment rewrote this section.

**§ 18-38. Director of State Board of Alcoholic Control.**—There shall be a Director of the State Board of Alcoholic Control who shall be a career official and the administrative officer of the Board. On July 1, 1965, and quadrennially thereafter, the Governor shall appoint the Director, subject to the approval of the State Board of Alcoholic Control. A vacancy in the office of the Director shall be filled for the unexpired term by the Governor, subject to approval by the Board. The Governor, at all times, subject to approval by the Board, shall have full power and authority to remove the Director for cause.

The Director shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission.

Subject to the approval of the State Board of Alcoholic Control, the Director shall have such powers and perform such duties as the State Board of Alcoholic Control shall prescribe, including the authority to appoint, promote, demote and discharge all subordinate officers and employees of the State Board of Alcoholic Control, and they shall perform such duties as the Director may assign. (1937, c. 49, s. 3; 1963, c. 916, s. 1; 1965, c. 1102, s. 2.)

**Editor's Note.** — The 1963 amendment rewrote this section.

The 1965 amendment again rewrote this

section, which formerly provided for the appointment and terms of members of the Board.



**§ 18-39. Powers and authority of Board.** — Said State Board of Alcoholic Control shall have power and authority as follows, to wit:

- (1) To see that all the laws relating to the sale and control of alcoholic beverages are observed and performed.
- (2) To audit and examine the accounts, records, books and papers relating to the operation of county stores herein provided for, or to have the same audited.
- (3) To fix the retail prices of all alcoholic beverages sold in county and municipal liquor stores at such levels as shall promote the temperate use of such beverages and as may facilitate policing, which price shall be uniform throughout the State, to compute the taxes levied by G.S. 18-85 on the retail prices so fixed, to determine the total prices of all such alcoholic beverages which total price shall be the sum of the retail price plus the tax levied by G.S. 18-85, and to notify the stores periodically of such prices. The State Board of Alcoholic Control shall cause the several county and municipal alcoholic boards of control to add to the established retail prices of all alcoholic beverages sold in said county and municipal liquor stores as provided above the sum of five cents (5¢) per bottle on every bottle of alcoholic beverages sold in said stores, which shall be in addition to the retail prices of all alcoholic beverages as set by the State Board of Alcoholic Control, which five cents (5¢) per bottle increase in the retail prices of alcoholic beverages sold by county or municipal liquor stores shall not be subject to the tax levied in G.S. 18-85, but the clear proceeds of the additional retail price of five cents (5¢) per bottle as provided above shall be remitted to the State Treasurer, accompanied by forms or reports to be prescribed and furnished by the State Board of Alcoholic Control, which remittances shall be placed in the general fund. Said reports and remittances of the five cents (5¢) per bottle as herein provided shall be made monthly by the local boards on or before the 15th day of the succeeding month.
- (4) To remove any member, or members, of county boards whenever in the opinion of the State Board, such member, or members, of the county board, or boards, may be unfit to serve thereon.
- (5) To test any and all alcoholic beverages which may be sold, or proposed to be sold to the county stores, and to install and operate such apparatus, laboratories, or other means or instrumentalities, and employ to operate the same such experts, technicians, employees and laborers, as may be necessary to operate the same, in accordance with the opinion of the said Board. In lieu of establishing and operating laboratories as above directed, the Board may, with the approval of the Governor and the Commissioner of Agriculture, arrange with the State Chemist to furnish such information and advice, and to perform such analyses and other laboratory services as the Board may consider necessary, or may, if they deem advisable, cause such tests to be made otherwise.
- (6) To supervise purchasing by the county boards when said State Board is of the opinion that it is advisable for it to exercise such power in order to carry into effect the purpose and intent of this article, with full power to disapprove any such purchase and at all times shall have the right to inspect all invoices, papers, books and records in the county stores or boards relating to purchases.
- (7) To exercise the power to approve or disapprove in its discretion all regulations adopted by the several county stores for the operation of said stores and the enforcement of alcoholic beverage control laws which may be in violation of the terms or spirit of this article.
- (8) To require that a sufficient amount shall be so allocated as to insure ade-

quate enforcement and the amount shall, in no instance, be less than five per cent, nor more than ten per cent of the net profits arising from the sale of alcoholic beverages.

- (9) To remove in case of violation of the terms or spirit of this article, officers employed, elected or appointed in the several counties where county stores may be operated.
- (10) To approve or disapprove, in its discretion, the opening and location of county stores; provided that in the location of control stores in any county in which a majority of the votes have been cast for liquor control stores, no store or stores shall be located in any community or town in which a majority of the votes cast were against control; provided further, however, that stores may be located in such communities and towns if and when as many as 15% of the qualified voters therein by petition, at any time after eighteen months since the last election on such question, have requested the location of such a store or stores in such communities or towns and the State Board shall have found, upon due investigation after receipt of such petition, that a majority of the qualified electors in such community or town are at the time of the making of such investigation in favor of the establishment of such store or stores, provided each county that may be entitled to operate stores for the sale of alcoholic beverages shall be entitled to operate at least one store for such purpose. As to all additional stores in each of said counties the same shall not be opened until and unless the opening of the same and the place of location thereof shall first be approved by the said State Board, which at any time may withdraw its approval of the operation of any additional county store when the said store is not operated efficiently and in accordance with the alcoholic beverage control laws and all valid regulations prescribed therefor, or whenever, in the opinion of the said State Board, the operation of any county store shall be inimical to the morals or welfare of the community in which it is operated or for such other cause, or causes, as may appear to said State Board sufficient to warrant the closing of any county store.
- (11) To require the use of a uniform accounting system in the operation of all county stores hereunder and to provide in said system for the keeping therein and the record of all such information as may, in the opinion of the said State Board, be necessary or useful in its auditing of the affairs of the said county stores, as well as in the study of such problems and subjects as may be studied by said State Board in the performance of its duties.
- (12) To grant, to refuse to grant, or to revoke, permits for any person, firm or corporation to do business in North Carolina in selling alcoholic beverages to or for the use of any county store and to provide and to require that such information be furnished by such person, firm or corporation as a condition precedent to the granting of such permit, or permits, and to require the furnishing of such data and information as it may desire during the life of such permit, or permits, and for the purpose of determining whether such permit, or permits, shall be continued, revoked or regranted after expiration dates. No permit, however, shall be granted by said State Board, to any person, firm or corporation when the said State Board has reason sufficient unto itself to believe that such person, firm or corporation has furnished to it any false or inaccurate information or is not fully, frankly and honestly cooperating with the said State Board and the several county boards in observance and performance of all alcoholic beverage laws which may now or hereafter be in force in this State, or whenever the said

Board shall be of opinion that such permit ought not to be granted or continued for any cause.

- (13) The said State Board shall have all other powers which may be reasonably implied from the granting of express powers herein named, together with such other powers as may be incidental to, or convenient for, the carrying out and performance of the powers and duties herein given to said Board.
- (14) To permit the establishment of warehouses for the storage of alcoholic beverages within the State, the storage of alcoholic beverages in warehouses already established, and to prescribe rules and regulations for the storage of such beverages and the withdrawal of the same therefrom. Such warehousing or bailment of alcoholic beverages as may be made hereunder shall be for the convenience of delivery to alcoholic boards of control and others authorized to purchase the same and shall be under the strict supervision and subject to all of the rules and regulations of the State Board of Control relating thereto. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1961, c. 956; 1963, c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3.)

**Local Modification.** — City of Greensboro: 1959, c. 1137, s. 1.

**Editor's Note.** — The first 1963 amendment added a paragraph at the end of the section. The second 1963 amendment rewrote subdivision (3).

The first 1965 amendment added the last two sentences in subdivision (3). The second 1965 amendment deleted the former last paragraph added by the first 1963 amendment, relating to delegation of Board's powers and duties to the chairman thereof.

**Rules and Regulations.** — This section would seem to authorize the making of necessary rules and regulations to carry out the provisions of the act. 15 N.C.L. Rev. 323.

**The State Board is given power to grant, deny or revoke permits** for the sale of alcoholic beverages to county liquor stores.

This seems to be a very flexible provision to secure an honest co-operation by those who sell alcoholic beverages with the State Board and the several county boards. There are no provisions for notice or hearing or appeal and it is likely that no such provisions are needed in view of the fact that State agencies are engaged in the purchase of goods and may do so on their own terms. 15 N.C.L. Rev. 328.

**Duty of Undercover Agent of Board.** — This section places upon an undercover investigator of the State Alcoholic Beverage Control Board the duty of enforcing the provisions of both the Turlington Act and the alcoholic Beverage Control Act. State v. Taylor, 236 N.C. 130, 71 S.E.2d 924 (1952).

**Cited in** Hunter v. Board of Trustees, 224 N.C. 359, 30 S.E.2d 384 (1944).

**§ 18-39.1. Special peace officers; Board authorized to commission employees; no additional compensation.** — The State Board of Alcoholic Control is hereby authorized and empowered to commission as special peace officers such regular employees (including the chairman) as the State Board of Alcoholic Control may designate for the purpose of enforcing the provisions of chapter 18 of the General Statutes. Such employees shall receive no additional compensation for performing the duties of peace officer. (1961, c. 645; 1963, c. 426, s. 1.)

**Editor's Note.** — The 1963 amendment inserted "(including the chairman)" near the middle of the section.

**§ 18-39.2. Same; powers and jurisdiction.** — Any regular employee of the State Board of Alcoholic Control commissioned as a special peace officer shall have the right to arrest with warrant any person violating the provisions of chapter 18 of the General Statutes and shall have power to pursue and arrest without warrant any person violating in his presence any of the provisions of chapter 18 and any breach of the peace including public drunkenness connected to or associated with the enforcement of the provisions of chapter 18. All special peace



officers appointed by the State Board of Alcoholic Control shall have state-wide jurisdiction in enforcing the provisions of chapter 18. (1961, c. 645; 1963, c. 426, s. 2.)

**Editor's Note.** — The 1963 amendment rewrote the second sentence of this section.

§ 18-39.3. **Same; bonds.** — Each employee of the State Board of Alcoholic Control commissioned as a special peace officer under this chapter shall give a bond with a good surety, payable to the State of North Carolina, in a sum not less than one thousand dollars (\$1,000.00), conditioned upon the faithful discharge of his duty as such peace officer. The bond shall be duly approved by and filed in the office of the Insurance Commissioner, and received in evidence in all actions and proceedings in this State. (1961, c. 645.)

§ 18-39.4. **Same; oaths.** — Before any employee of the State Board of Alcoholic Control, commissioned as a special peace officer, shall exercise any power of arrest under this chapter, he shall take the oath required of public officers before an officer authorized to administer oaths. (1961, c. 645.)

§ 18-40. **Removal of member by Governor; vacancy appointments.** —The Governor shall at all times have full power and authority to remove any and all members of the said State Board, upon notice to such member or members, in his discretion, for any cause that appears to him to be sufficient, and to reappoint his successor or successors to the removed members, observing, however, the terms of office of each of them, as herein set forth, and whenever a vacancy shall occur for any cause then the appointment to fill such vacancy shall be for the unexpired portion of the term of the predecessor of each appointee. (1937, c. 49, s. 5.)

§ 18-41. **County boards of alcoholic control.**—In each county which may be permitted to engage in the sale of alcoholic beverages, there is hereby created a county board of alcoholic control, to consist of a chairman and two other members. The members of said board shall be well known for their character, ability and business acumen. The members of said board shall be selected in each respective county in a joint meeting of the board of county commissioners, the county board of health and the county board of education, and each member present shall have only one vote, notwithstanding the fact that there may be instances in which some members are members of another board.

The terms of office of the members of said county boards shall be as follows: The chairman, who shall be so designated by the appointing boards, shall serve for his first term a period of three years and one member shall serve for his first term a period of two years and the other member shall serve for a period of one year, all terms beginning with the date of their appointment and after the said term shall have expired their successors in office shall serve for a period of three years and shall be appointed in the same manner as herein provided in this section.

Any member of any of the county boards hereinabove referred to in this section may be removed at any time by such composite board consisting of the board of county commissioners, the board of education and the board of health, whenever such composite board may find by a majority vote of its entire membership such member or members unfit to serve thereon, each member having only one vote as above provided for the selection of such members of county boards. In the event any member of the county board shall be removed hereunder, his successor shall be selected to serve out the time for which such member was originally selected.

Upon the death or resignation of the chairman or any other member of the county board of alcoholic control, whether selected under the provisions of this article or under the provisions of chapter four hundred and eighteen or chapter

four hundred and ninety-three of the Public Laws of one thousand nine hundred and thirty-five, before the expiration of the term of office for which said chairman or member has been appointed, elected or selected, his successor to fill out such unexpired term shall be selected at a joint meeting of the board of county commissioners, the county board of health and the county board of education, which joint meeting shall be held within ten (10) days after such resignation or death, which meeting shall be called by the chairman or some other member of the county board of alcoholic control, by giving notice to each member of the time and place of holding such meeting. (1937, c. 49, s. 6; cc. 411, 431.)

**Local Modification.**—Bertie: 1937, c. 310; Cited in *State v. Taft*, 256 N.C. 441, 124 Dare: 1939, c. 168; Halifax: 1937, c. 302; S.E.2d 169 (1962).  
1943, c. 433; Pasquotank: 1939, c. 131.

**Stated in** *Langley v. Taylor*, 245 N.C. 59, 95 S.E.2d 115 (1956).

**§ 18-42. Compensation for members of county boards.**—The salaries of the members of the said county board shall be fixed by the joint meeting of the several boards that appoint them and shall be fixed with the view to securing the very best members available, with due regard to the fact that such salaries shall be adequate compensation, but shall not be large enough to make said positions unduly attractive or the objects of political aspirations. (1937, c. 49, s. 7.)

**§ 18-43. Persons disqualified for membership on boards.**—No person shall be appointed a member of either the State Board or of any county board or employed thereby who shall be a stockholder in any brewery or the owner of any interest therein in any manner whatsoever, or interested therein directly or indirectly, or who is likewise interested in any distillery or other enterprise that produces, mixes, bottles or sells alcoholic beverages, or who is related to any person likewise interested or associated in business with any person likewise interested and neither of said boards shall employ any person who is interested in, directly or indirectly, or related to, any person interested in any firm, person or corporation permitted to sell alcoholic beverages in this State. (1937, c. 49, s. 8; c. 411.)

**§ 18-44. Bonds required of members of county boards.**—The several members of the county board shall give bond for the faithful performance of their duties, in the penal sum of five thousand (\$5,000.00) dollars, and the said bond shall be payable to the State of North Carolina and to the county in which said board performs its duties, with some corporate surety, which surety shall be satisfactory to, and approved by, the county attorney of said county, and the chairman of the State Board, and shall be deposited with the chairman of the State Board. The State Board for and on behalf of the State of North Carolina, and the county named in said bond, shall each be secured therein to the full amount of the penalty thereof and the recovery or payment of any sums due thereunder to either shall not diminish or affect the right of the other obligee in said bond to recover the full amount of the said penalties thereof, and the giving and the approval of such bond shall be a part of the qualification of said members and no member shall be entitled to exercise any of the functions or powers incident to his appointment until and unless the said bond shall have been given and approved as herein provided. The three joint boards referred to in § 18-41 shall be authorized to relieve any member of the county boards who does not handle any money or funds from furnishing such bond, and shall be further authorized to require bond in excess of five thousand dollars (\$5,000) of any member of the board handling money or funds in the event said joint boards deem it advisable to increase such bond. (1937, c. 49, s. 9; 1939, c. 202.)

**§ 18-45. Powers and duties of county boards.** — The said county boards shall each have the following powers and duties:

- (1) Control and jurisdiction over the importation, sale and distribution of alcoholic beverages within its respective county.
- (2) Power to buy and to have in its possession and to sell alcoholic beverages within its county.
- (3) Power and authority to adopt rules and regulations governing the operation of stores within its county and relating to the carrying out of the provisions and purposes of this article.
- (4) To prescribe and regulate and direct the duties and services of all employees of said county board.
- (5) To fix the hours for the opening and closing of stores operated by it. No store, however, shall be permitted to remain open between the hours of nine o'clock P. M. and nine o'clock A. M.
- (6) To require any county stores to close on such days as it may designate, but all stores in any county operating under the provisions of this article shall remain closed on Sundays, election days, New Year's Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving and Christmas Day.
- (7) To import, transport, receive, purchase, sell and deliver and have in its possession for sale for present and future delivery alcoholic beverages.
- (8) To purchase or lease property, furnish and equip buildings, rooms and accommodations as and when required for the storage and sale of alcoholic beverages and for distribution to all county stores within said county.
- (9) To borrow money, guarantee the payment thereof and the interest thereon, in such manner as may be required or permitted by law, and to issue, sign, endorse and accept checks, promissory notes, bills of exchange and other negotiable instruments and to do all such other and necessary things as may be required or may be convenient in the conduct of liquor stores in its county.
- (10) To investigate and aid in the prosecution of violations of this article and other liquor laws, by whatever name called, and to seize alcoholic beverages in said county sold, kept, imported or transported illegally and to apply for confiscation thereof and to cooperate in the prosecution of offenders in any court in said county.
- (11) To regulate and to prescribe rules and regulations that may be necessary or feasible for the obtaining of purity in all alcoholic beverages, including true statements of contents and the proper labeling thereof.
- (12) To require liquor stores to sell alcoholic beverages at the prices fixed by the State Board of Alcoholic Control, and to prescribe to whom the same may be sold.

The provisions of this article shall not apply to ethyl alcohol intended for use and/or used for the following purposes:

For scientific, chemical, mechanical, industrial, medicinal and culinary purposes.

For use by those authorized to procure the same tax free, as provided by the acts of Congress and regulations promulgated thereunder.

In the manufacture of denatured alcohol produced and used as provided by the acts of Congress and regulations promulgated thereunder.

In the manufacture of patented, patent, proprietary, medicinal, pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical, and industrial preparations or products unfit for beverage purposes.

In the manufacture of flavoring extracts and syrups unfit for beverage purposes.

- (13) To exercise the power to buy, purchase and sell and to fix the prices at



which all alcoholic beverages may be purchased from it, but nothing herein contained shall give said board the power to purchase or sell or deal in alcoholic beverages which contain less than five per centum of alcohol by weight.

- (14) To locate stores in its county and to provide for the management thereof and to appoint and employ at least one person for each store conducted by it, who shall be known as "manager" thereof. The duty of such manager shall be to conduct the said store under directions of the county board and to carry out the law applying thereto, and such manager shall give bond for the faithful performance of his duties in such sum as may be fixed by said county board, with sufficient corporate surety and said surety, or sureties thereon, shall be approved by the said county board as a part of the qualifications of such manager for his appointment, and the said county board shall have the right to sue on said bond and to recover for all failures on the part of said manager faithfully to perform his duties as such manager, to the extent of any loss occasioned by such manager on his part, but as against the surety, or sureties, thereon, such aggregate recovery, or recoveries, shall not exceed the penalty of said bond.
- (15) To expend for law enforcement a sum not less than five per cent nor more than ten per cent of the total profits to be determined by quarterly audits and in the expenditure of said funds shall employ one or more persons to be appointed by and directly responsible to the respective county boards. In addition, any county or municipal board is authorized, in its discretion, to expend for education as to the effects of the use of alcoholic beverages and for the rehabilitation of alcoholics not more than five per cent (5%) of its total profits, to be determined by quarterly audits. The persons so appointed shall, after taking the oath prescribed by law for the peace officers, have the same powers and authorities within their respective counties as other peace officers. And any person so appointed, or any other peace officer while in hot pursuit of anyone found to be violating the prohibition laws of this State, shall have the right to go into any other county of the State and arrest such offender therein so long as such hot pursuit of such person shall continue, and the common law of hot pursuit shall be applicable to said offenses and such officers. Any law enforcement officer appointed by such county boards and any other peace officer is hereby authorized, upon request of the sheriff or other lawful officer in any other county, to go into such other county and assist in suppressing a violation of the prohibition law therein, and while so acting shall have such powers as a peace officer as are granted to him in his own county and be entitled to all the protection provided for said officer while acting in his own county.
- (16) To discontinue the operation of any store in its county whenever it shall appear to said board that the operation thereof is not sufficiently profitable to justify a continuance of its operation, or when, in its opinion, the operation of any store is inimical or hurtful to the morals or welfare of the community in which it is operated, or when said county board may be directed to close any store by the State Board.

All the powers and duties herein conferred upon county boards, or required of them, shall be subject to the powers herein conferred upon the State Board and whenever or wherever herein the State Board has been given power to approve or disapprove anything in respect to county stores or county boards, then no power

on the part of the county boards and no act of any county board shall be exercisable or valid until and unless the same has been approved by the State Board. (1937, c. 49, s. 10; cc. 411, 431; 1939, c. 98; 1957, cc. 1006, 1335; 1963, c. 1119, s. 2.)

**Local Modification.**—Beaufort as to subdivision (8): 1961, c. 945; Caswell: 1959, c. 97; Catawba, as to subdivision (15): 1953, c. 784; Chowan, as to subdivision (15): 1957, c. 693; Cumberland, as to subdivision (8): 1959, c. 315; Hertford, as to subdivision (15): 1965, c. 895; Martin, as to subdivision (15): 1957, c. 693; Mecklenburg, as to subdivision (8): 1953, c. 11; Moore: 1937, c. 49, s. 10 (p); Nash: 1951, c. 738; as to subdivision (15): 1965, c. 1086; Onslow: 1965, c. 98; Wake (town of Wake Forest and within five miles thereof): 1955, c. 308, s. 1; city of Greensboro: 1959, c. 1137, s. 1; city of Winston-Salem, as to subdivision (8): 1959, c. 898.

**Editor's Note.**—For comment on the 1939 amendment, see 17 N.C.L. Rev. 349.

**§ 18-46. No sales except during hours fixed by county boards; sales to minors, habitual drunkards, etc.; discretion of managers and employees; list of persons convicted of drunkenness, etc.; unlawful to buy for person prohibited.**—No alcoholic beverage shall be sold knowingly by any county store or the manager thereof or any employee therein at any time other than within the opening and closing hours for said store, as fixed in the manner herein provided, and otherwise as prescribed by the said county board. No alcoholic beverage shall be sold knowingly to any minor, or to any person who has been convicted of public drunkenness or of driving any motor vehicle while under the influence of intoxicating liquors, or has been convicted of any crime wherein the court or judge shall find as a fact that such person committed said crime or aided and abetted in the commission thereof as a result of the influence of intoxicating liquors (within one year of any such conviction), or to any person known to be an habitual drunkard or who has within one year been confined in the inebriate ward of any State institution. The manager and employees of and in any county store may, in their discretion, refuse to sell alcoholic beverage to any individual applicant, and such power and the duty to exercise the same shall vest in and apply to such manager and employees, regardless of the failure of the county boards to make any regulations providing for the same, and in their discretion may refuse to sell more than four quarts at any one time in any one day to any person.

The various clerks of the superior court and of any inferior courts in counties coming under the provisions of this article shall furnish to the chairman of the control board of their county a list of all persons convicted of public drunkenness or convicted of driving an automobile while intoxicated; and the State Motor Vehicle Department shall furnish to the chairmen of all the control boards in this State a list of all persons whose driving licenses have been revoked for driving an automobile while intoxicated, or for the illegal use of whiskey.

It shall be unlawful for any person to buy any alcoholic beverage if he be within the class prohibited from purchasing same as set out in this section, and it shall further be unlawful for any person to buy any alcoholic beverage for any person who may be prohibited from purchasing for himself under any of the provisions of this article. (1937, c. 49, s. 11; c. 411.)

**§ 18-47. Drinking upon premises prohibited; stores closed on Sundays, election days, etc.**—No alcoholic beverage shall be drunk upon the

The 1963 amendment rewrote subdivision (12).

**An alcoholic beverage control officer is a "public officer"** within the meaning of § 14-223 and is entitled to the protection of that section. *State v. Taft*, 256 N.C. 441, 124 S.E.2d 169 (1962).

**Applied in** *Langley v. Patrick*, 238 N.C. 250, 77 S.E.2d 656 (1953) (as to subdivision (3)).

**Quoted in** *Langley v. Taylor*, 245 N.C. 59, 95 S.E.2d 115 (1956).

**Stated in** *Jordan v. Harris*, 225 N.C. 763, 36 S.E.2d 270 (1945).

**Cited in** *Hunter v. Board of Trustees*, 224 N.C. 359, 30 S.E.2d 384 (1944).

premises of any county store or warehouse, or room or building occupied or used by any county board or any of its employees for the purpose of performing their duties in respect to alcoholic beverages, and such county boards, managers and employees shall not permit alcoholic beverages to be drunk upon said premises and all county stores shall be closed on Sundays and election days, and such other days as the State Board may designate. (1937, c. 49, s. 12.)

**§ 18-48. Possession illegal if taxes not paid; punishment and forfeiture for violations; possession in container without proper stamp, prima facie evidence; counterfeit or unauthorized stamps.**—It shall be unlawful for any firm, person or corporation to have in his or its possession any alcoholic beverages as defined herein upon which the taxes imposed by the laws of Congress of the United States or by the laws of this State, have not been paid and any person convicted of the violation of this section shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court and the alcoholic beverage shall be seized and forfeited, together with any vehicle, vessel, aeroplane or other equipment used in the transportation and to carry the said alcoholic beverages, and the procedure pointed out in § 18-6 for the seizure, arrest, confiscation and sale of such vehicle, vessel, aeroplane or other means of transportation shall be used and the provisions of said § 18-6 are hereby declared to be in full force and effect in any of the counties of the State which shall operate under the provisions of this article, and the possession of such alcoholic beverages in a container which does not bear either a revenue stamp of the federal government or a stamp of any of the county boards of the State of North Carolina shall constitute prima facie evidence of the violation of this section. The willful manufacturing or causing to be manufactured or the willful possession of any counterfeit or unauthorized beverage control stamps shall be unlawful and punishable as a misdemeanor. (1937, c. 49, s. 13; 1957, c. 984.)

**Cross Reference.** — As to presumption arising from possession of nontax-paid liquor, see note under § 18-50.

**Purpose of Section.**—After the adoption of the Turlington Act, article 1 of this chapter, the State imposed no tax on alcoholic beverages and it was, with certain exceptions, unlawful to possess any quantity of intoxicating liquor. Under the A.B.C. Act, liquor may be purchased from A.B.C. stores and now it is not unlawful to possess liquor in the quantities and under the conditions prescribed by that act. But, to make certain that this modification of the Turlington Act applies only to liquor upon which the taxes imposed by the federal and State governments have been paid, the General Assembly wrote into the A.B.C. Act the provision which is now this section, making it unlawful to possess any quantity of liquor upon which such taxes have not been paid. *State v. Avery*, 236 N.C. 276, 72 S.E.2d 670 (1952).

**This section must be construed with the Turlington Act, and does not create a separate offense.** *State v. Avery*, 236 N.C. 276, 72 S.E.2d 670 (1952).

**A violation of this section is a crime separate and distinct from a violation of §§ 18-2, 18-29 and 18-50.** *State v. Simmons*, 256 N.C. 688, 124 S.E.2d 887 (1962).

**Possession Unlawful without Exception.**

—The possession of nontax-paid liquor in any quantity anywhere in the State is, without exception, unlawful. *State v. Barnhardt*, 230 N.C. 223, 52 S.E.2d 904 (1949); *State v. Parker*, 234 N.C. 236, 66 S.E.2d 907 (1951); *State v. Avery*, 236 N.C. 276, 72 S.E.2d 670 (1952); *State v. Brown*, 238 N.C. 260, 77 S.E.2d 627 (1953); *State v. Guffey*, 252 N.C. 60, 112 S.E.2d 734 (1960).

**This section and § 18-50 are on an equal footing, and neither prescribes nor includes a lesser offense or an offense of lesser degree.** *State v. McNeill*, 225 N.C. 560, 35 S.E.2d 629 (1945); *State v. Hall*, 240 N.C. 109, 81 S.E.2d 189 (1954); *State v. Daniels*, 244 N.C. 671, 94 S.E.2d 799 (1956).

**And Each Creates a Specific Offense.**—

This section and § 18-50 each creates a specific criminal offense, and a violation of this section is not a lesser offense included in the offense defined in § 18-50. *State v. Cofield*, 247 N.C. 185, 100 S.E.2d 355 (1957); *State v. Morgan*, 246 N.C. 596, 99 S.E.2d 764 (1957).

**Which Raises Presumption under § 18-11.**

—This section and § 18-50 are state-wide in application, and the possession of any quantity of nontax-paid liquor is, without exception, unlawful, and under § 18-11 raises the presumption, even though less than one



gallon in quantity, that possession is for the purpose of sale. *State v. Guffey*, 252 N.C. 60, 112 S.E.2d 734 (1960).

**Possession May Be Actual or Constructive.**—Possession, within the meaning of this section, may be either actual or constructive. *State v. Brown*, 238 N.C. 260, 77 S.E.2d 627 (1953); *State v. Guffey*, 252 N.C. 60, 112 S.E.2d 734 (1960).

There can be a constructive possession of nontax-paid whiskey, as well as an actual possession. *State v. Carver*, 259 N.C. 229, 130 S.E.2d 285 (1963).

**What Warrant or Indictment Should Charge.**—Under this section a warrant or indictment should charge the unlawful possession of alcoholic beverages upon which the taxes imposed by the laws of the Congress of the United States or by the laws of this State had not been paid. *State v. May*, 248 N.C. 60, 102 S.E.2d 418 (1958).

**Amendment of Warrant Charging Violation of § 18-50.**—The superior court had no power to permit a warrant charging a violation of § 18-50 to be amended so as to charge also a violation of this section. *State v. Cofield*, 247 N.C. 185, 100 S.E.2d 355 (1957).

**An allegation in a warrant or bill of indictment to the effect that the federal and State taxes had not been paid upon the liquor seized or that it was illicit liquor is merely descriptive, and does not limit the prosecution to any particular section of the liquor law or deprive the State of the benefit of the general provisions of the law as it now exists. Instead, it facilitates proof of the unlawfulness of the possession and renders it unnecessary to prove possession of any particular quantity.** *State v. Avery*, 236 N.C. 276, 72 S.E.2d 670 (1952).

**The General Assembly has made it easy and simple to make out a prima facie case under this section. All the State has to prove to make out a prima facie case is to show that the container or containers seized contained an alcoholic beverage and that the container or containers bore no revenue stamp of the federal government or a stamp of any of the county boards of the State of North Carolina.** *State v. Smith*, 249 N.C. 212, 105 S.E.2d 622 (1958).

**What State Must Prove.**—A plea of not guilty places upon the State the burden of proving beyond a reasonable doubt all essential elements of the offense under this section: (1) Possession; (2) the federal or State tax had not been paid; (3) alcoholic contents exceeding fourteen per

cent by volume under § 18-60. *State v. Pitt*, 248 N.C. 57, 102 S.E.2d 410 (1958).

**Evidential Effect of the Absence of Stamps on Containers.**—The provision of this section as to the evidential effect of the absence of stamps on containers holding alcoholic beverages creates a factual inference or conclusion to be drawn from other facts recited. This inference or conclusion is denominated *prima facie* evidence. It, like all the other evidence, must be weighed before the jury can render a verdict. In criminal cases this evidence, coupled with other evidence, must establish defendant's guilt beyond a reasonable doubt. Defendant is entitled to have the jury scrutinize this evidence as it does all of the other evidence with a presumption of innocence in his favor. It does not suffice for proof "until contradicted and overcome by other evidence." It may fall because of its own weakness. *State v. Bryant*, 245 N.C. 645, 97 S.E.2d 264 (1957).

**Sufficiency of Warrant.**—A warrant which, stripped of nonessential words, charges defendant with unlawful possession of a quantity of nontax-paid whiskey, is sufficient to survive a motion to quash. *State v. Camel*, 230 N.C. 426, 53 S.E.2d 313 (1949).

**Sufficiency of Evidence.**—In a prosecution under this section on a warrant charging possession of nontax-paid liquor, evidence by the State that six gallons of liquor and a jar of "white liquor" were found on defendant's premises, without evidence that the containers did not bear a revenue stamp of the federal government or a stamp of any of the county A.B.C. boards, is insufficient to sustain conviction. The court will not take judicial notice that "white liquor" means nontax-paid liquor. *State v. Wolf*, 230 N.C. 267, 52 S.E.2d 920 (1949).

Evidence of defendant's illegal possession of a considerable quantity of nontax-paid whiskey was held sufficient to carry the case to the jury and his motion to nonsuit was properly denied. *State v. Camel*, 230 N.C. 426, 53 S.E.2d 313 (1949); *State v. Harrison*, 239 N.C. 659, 80 S.E.2d 481 (1954).

The court cannot take judicial notice that "bootleg whiskey" is "nontax-paid liquor." *State v. Tillery*, 243 N.C. 706, 92 S.E.2d 64 (1956).

Evidence that whiskey belonging to defendant was found on defendant's premises, that the whiskey was not A.B.C. whiskey, together with stipulations that the containers bore no stamps, is sufficient to be submitted to the jury in a prosecution

under this section. *State v. Pitt*, 248 N.C. 57, 102 S.E.2d 410 (1958).

**Evidence Sufficient to Overrule Defendant's Motion to Nonsuit.**—See *State v. Avery*, 236 N.C. 276, 72 S.E.2d 670 (1952); *State v. Bryant*, 245 N.C. 645, 97 S.E.2d 264 (1957); *State v. Mitchell*, 260 N.C. 235, 132 S.E.2d 481 (1963).

Evidence showing nontax-paid liquor found within the curtilage of the defendant's home is sufficient to take the case to the jury under this section, and the court will properly overrule defendant's motion for judgment as of nonsuit. *State v. Gibbs*, 238 N.C. 258, 77 S.E.2d 779 (1953).

**Confiscation of Car.**—Defendant admitted ownership of the car in which two bottles of nontax-paid whiskey were being transported at the time of his arrest, and he was found guilty of unlawful transportation of intoxicating liquor. This was held

sufficient to sustain the court's order confiscating his car and ordering it sold in conformity with statute. *State v. Vanhoy*, 230 N.C. 162, 52 S.E.2d 278 (1949).

**Applied in** *State v. Barley*, 240 N.C. 253, 81 S.E.2d 772 (1954); *State v. Bell*, 249 N.C. 379, 106 S.E.2d 495 (1959); *State v. Humphrey*, 261 N.C. 511, 135 S.E.2d 214 (1964).

**Cited in** *State v. Gordon*, 224 N.C. 304, 30 S.E.2d 43 (1944); *State v. Gordon*, 225 N.C. 241, 34 S.E.2d 414 (1945); *State v. Peterson*, 226 N.C. 255, 37 S.E.2d 591 (1946); *State v. Maynor*, 226 N.C. 645, 39 S.E.2d 833 (1946); *State v. Jenkins*, 234 N.C. 112, 66 S.E.2d 819 (1951); *State v. Scoggin*, 236 N.C. 19, 72 S.E.2d 54 (1952); *State v. Poe*, 245 N.C. 402, 96 S.E.2d 5 (1957); *State v. Cobb*, 250 N.C. 234, 108 S.E.2d 237 (1959).

**§ 18-49. Transportation, not in excess of one gallon, authorized; transportation in course of delivery to stores.**—It shall not be unlawful for any person to transport a quantity of alcoholic beverages not in excess of one gallon from a county in North Carolina coming under the provisions of this article to or through another county in North Carolina not coming under the provisions of this article: Provided, said alcoholic beverages are not being transported for the purposes of sale, and provided further that the cap or seal on the container or containers of said alcoholic beverages has not been opened or broken. Nothing contained in this article shall be construed to prevent the transportation through any county not coming under the provisions of this article, of alcoholic beverages in actual course of delivery to any alcoholic beverage control board established in any county coming under the provisions of this article. (1937, c. 49, s. 14.)

**Local Modification.**—Haywood: 1955, c. 827.

**Cross Reference.**—As to transportation into State, etc., see § 18-58.

**Editor's Note.**—For comment on this section, see 29 N.C.L. Rev. 55.

**Section permits, with certain provisos, the transportation of taxpaid whiskey not in excess of one gallon from a county in North Carolina which has elected to operate under the Alcoholic Beverage Control Act to another county not coming under its provisions for the use of himself, his family, and his bona fide guests.** *State v. Bell*, 264 N.C. 350, 141 S.E.2d 493 (1965).

**Section Modifies § 18-2.**—Section 18-2 prohibiting the transportation of intoxicating liquor has been modified by this section so that it is not unlawful to transport through a county which has not elected to come under the provisions of the Alcoholic Beverage Control Act, alcoholic beverages in actual course of delivery to any alcoholic beverage control board. *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**Guilty Knowledge.**—This section must be interpreted in the light of the common-

law principle that guilty knowledge is an essential element of crime, and therefore a person cannot be held guilty of illegally transporting intoxicating liquors if he has no knowledge of the nature of the goods transported. *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**Where Transporter Accompanied by Others.**—This section cannot be construed to permit the driver of an automobile to carry or convey more than one gallon of alcoholic beverages in his automobile even though he is accompanied by others. *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**Instance of Violation.**—Where the evidence showed that defendant's automobile contained two gallons of alcoholic beverages with his knowledge, and that with such knowledge he conveyed such quantity of alcoholic beverages from one place to another in his automobile for some purpose other than that of delivering the same to an alcoholic beverage control board in a county coming under the provisions of the Alcoholic Beverage Control Act, the charge preferred against him of unlawfully transporting intoxicating liquor in a quan-

tity in excess of one gallon was properly affirmed. *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**Exemption Is Matter of Defense.**—This section, permitting the transportation of alcoholic beverages not in excess of one gallon from a county which has elected to come under this article to another county not coming under the provisions of this article, is a matter of defense, and it is incumbent upon the defendant to bring his case within the exemption either from the State's evidence or from his own. *State v. Holbrook*, 228 N.C. 582, 46 S.E.2d 842 (1948).

**Sufficiency of Evidence.**—Evidence tending to show only that defendant transported in a bus from a county having liquor stores to a dry county one gallon of tax-paid liquor with seals unbroken is insufficient to show unlawful transportation.

it being legally established that the transportation was not for the purpose of sale. *State v. Love*, 236 N.C. 344, 72 S.E.2d 737 (1952).

Evidence held insufficient to fix defendant with ownership or possession of liquor found in baggage compartment of bus. *State v. Love*, 236 N.C. 344, 72 S.E.2d 737 (1952).

**Applied in** *State v. Coffey*, 255 N.C. 293, 121 S.E.2d 736 (1961).

**Stated in** *State v. Peterson*, 226 N.C. 255, 37 S.E.2d 591 (1946).

**Cited in** *State v. Suddreth*, 223 N.C. 610, 27 S.E.2d 623 (1943); *State v. Barnhardt*, 230 N.C. 223, 52 S.E.2d 904 (1949); *State v. Merriitt*, 231 N.C. 59, 55 S.E.2d 804 (1949); *State v. Fuqua*, 234 N.C. 168, 66 S.E.2d 667 (1951); *State v. Welborn*, 249 N.C. 268, 106 S.E.2d 204 (1958).

**§ 18-49.1. Regulating transportation in excess of one gallon for delivery to federal reservation or to another state; conditions to be complied with.**—Before any person shall transport over the roads and highways of this State any alcoholic beverages in excess of one gallon within, into or through the State of North Carolina for delivery to a federal reservation exercising exclusive jurisdiction, or in transit through this State to another state, such person shall post with the State Board of Alcoholic Beverage Control a bond with surety approved by the said Board, payable to the State of North Carolina in the penal sum of one thousand dollars (\$1,000.00), running in the name of the State of North Carolina, conditioned that such person will not unlawfully transport or deliver any alcoholic beverages within, into or through the State of North Carolina, the forfeiture to be in case of conviction paid to the school fund of the county in which the seizure is made and any such county shall have the right to sue for the same. When such alcoholic beverages are desired to be transported within, into or through the State of North Carolina, such transportation shall be engaged in only under the following conditions:

- (1) **Statement as to Bond and Bill of Lading Required.**—There shall accompany such alcoholic beverages a statement signed by the chairman or Director of the State Board of Alcoholic Beverage Control showing that the bond hereinbefore required has been furnished and approved. There shall accompany such alcoholic beverages at all times during transportation a bill of lading or other memorandum of shipment signed by the consignor showing an exact description of the alcoholic beverages being transported, the name and address of the consignor, the name and address of the consignee, the route to be traveled by such vehicle while in the State of North Carolina, and such route must be substantially the most direct route, from the consignor's place of business to the place of business of the consignee.
- (2) **Route Stated in Bill of Lading to Be Followed.**—Vehicles transporting alcoholic beverages shall not substantially vary from the route specified in the bill of lading or other memorandum of shipment.
- (3) **Names of True Consignor and Consignee Must Appear.**—The name of the consignor on any such bill of lading or other memorandum of shipment shall be the name of the true consignor of the alcoholic beverages being transported and such consignor shall be only a person who has a legal right to make such shipment. The name of the consignee on any such bill of lading or memorandum of shipment shall



be the name of the true consignee of the alcoholic beverages being transported and who had previously authorized in writing the shipment of the alcoholic beverages being transported and who has a legal right to receive such alcoholic beverages at the point of destination shown on the bill of lading or other memorandum of shipment.

- (4) **Officers May Require Driver to Exhibit Papers.**—The driver or any person in charge of any vehicle so transporting such alcoholic beverages shall, when required by any sheriff, deputy sheriff or other police officer having the power to make arrests, exhibit to such officer such papers or documents required by this law to accompany such shipment. (1945, c. 457, s. 1; 1965, c. 1102, s. 4.)

**Editor's Note.** — For comment on the 1945 act inserting this and the following three sections, see 23 N.C.L. Rev. 352.

rector" for "secretary" near the middle of the first sentence of subdivision (1).

The 1965 amendment substituted "Di-

Applied in *State v. Wells*, 259 N.C. 173, 130 S.E.2d 299 (1963).

**§ 18-49.2. Transportation in excess of one gallon prohibited, exceptions; regulations of A.B.C. Board.** — The wilful transportation of alcoholic beverages within, into or through the State of North Carolina in quantities in excess of one gallon is prohibited except for delivery to federal reservations to which has been ceded exclusive jurisdiction by the State of North Carolina, or in transporting it through this State to another state in accordance with the provisions of § 18-49.1 and such regulations as may be adopted by the State Board of Alcoholic Beverage Control pursuant to this section. The State Board of Alcoholic Beverage Control may adopt further regulations governing the transportation of alcoholic beverages within, into and through the State of North Carolina in quantities in excess of one gallon, for delivery to federal reservations or in transit through this State to another state, as it may deem necessary to confine such transportation to legitimate purposes and may issue transportation permits in accordance with such regulations. (1945, c. 457, s. 2.)

**Possession Necessary Element of Transportation.**—Only a person in the actual or constructive possession of nontax-paid whiskey, absent conspiracy or aiding and abetting, could be guilty of the unlawful transportation thereof. *State v. Wells*, 259 N.C. 173, 130 S.E.2d 299 (1963).

**Purpose of Transportation.**—Whether the transportation of nontax-paid whiskey is unlawful does not depend upon whether it is being transported for the purpose of sale. *State v. Wells*, 259 N.C. 173, 130 S.E.2d 299 (1963).

**§ 18-49.3. Violation of § 18-49.1 or 18-49.2 a misdemeanor; seizure and disposition of vehicle and alcoholic beverages.**—Any person who shall wilfully transport alcoholic beverages in excess of one gallon within, into or through the State of North Carolina in violation of the provisions of § 18-49.1, or such regulations as may be adopted by the State Board of Alcoholic Beverage Control as authorized by § 18-49.2, shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. Any vehicle so illegally transporting such alcoholic beverages and the alcoholic beverages being so illegally transported shall be taken in possession by the officer upon arrest of the person engaged in such illegal transportation and, upon conviction of such person or upon forfeiture of bond and failure of such person to appear for trial, such vehicle shall be disposed of as is provided in § 18-6 and any alcoholic beverages so seized shall be disposed of as is provided in § 18-13. (1945, c. 457, s. 3.)

Applied in *State v. Wells*, 259 N.C. 173, 130 S.E.2d 299 (1963).

**§ 18-49.4. Exceptions to the application of §§ 18-49.1 to 18-49.3.**—The provisions of §§ 18-49.1 to 18-49.3 shall not apply to those beverages defined in § 18-64 purchased from a person licensed to sell the same in this State, and those light wines which may be transported as authorized by article six of

this chapter, and the wines defined in article five of this chapter. Nothing in said §§ 18-49.1 to 18-49.3 shall be construed to prevent the transportation of alcoholic beverages to be sold under the Alcoholic Beverage Control Act of one thousand nine hundred and thirty-seven, and amendments thereto, or to prevent the transportation of alcoholic beverages not in excess of one gallon, as authorized by law prior to the passage of said sections; nothing contained in the said sections shall be construed to prohibit the transportation in this State of alcoholic beverages legally acquired for one's own personal use and transported as now authorized by the laws of this State; and nothing contained in the said sections shall affect sleeping car companies or railroads in the lawful operations of their business. (1945, c. 457, ss. 3, 4.)

**§ 18-49.5. Transportation, possession and sale at installations operated by or for armed forces.**—Alcoholic beverages in quantities in excess of one gallon may be purchased by, transported to, possessed and sold by any open mess or officers' club at any installation located in any county in this State where alcoholic beverages may be legally sold or possessed, which installation is operated by or for any of the armed forces of the United States and where the possession, dispensing and sale of such alcoholic beverages is under the control and supervision of the department of the armed forces concerned; provided, however, that all such alcoholic beverages transported, possessed, dispensed or sold pursuant to this section on the premises of any such installation shall be purchased at the retail alcoholic beverage control store of the county in which such installation is located at the full retail price prevailing at the time of such purchase. Transportation permits may be issued by the State Board of Alcoholic Beverage Control under regulations adopted pursuant to G.S. 18-49.2 for the transportation of alcoholic beverages in excess of one gallon from the alcoholic beverage control store of the county in which such installation is located, for delivery to the responsible officer of such installation operated by or for any of the armed forces of the United States. The provisions of this section shall not be construed as to affect the source, or place of purchase, or the price paid for alcoholic beverages purchased, possessed, sold and dispensed by or at any open mess or officers' club or other facility located at or maintained at or by any of the armed forces of the United States at any place where jurisdiction has been ceded to or taken by the United States government. (1955, c. 1211.)

**§ 18-50. Possession for sale and sales of illicit liquors; sales of liquors purchased from stores.**—The possession for sale, or sales, of illicit liquors, or the sale of any liquors purchased from the county stores, is hereby prohibited and a violation of this section shall constitute a crime and shall be punishable by fine or imprisonment, or both, in the discretion of the court. (1937, c. 49, s. 15.)

**A violation of this section is a crime separate and distinct** from a violation of §§ 18-2, 18-29 and 18-48. *State v. Simmons*, 256 N.C. 688, 124 S.E.2d 887 (1962).

**This section and § 18-48 each creates a specific criminal offense**, and a violation of § 18-48 is not a lesser offense included in the offense defined in this section. *State v. Cofield*, 247 N.C. 185, 100 S.E.2d 355 (1957); *State v. Morgan*, 246 N.C. 596, 99 S.E.2d 764 (1957).

**Warrant Cannot Be Amended So as to Charge Violation of § 18-48.**—The superior court had no power to permit a warrant charging a violation of this section to be amended so as to charge also a violation

of § 18-48. *State v. Cofield*, 247 N.C. 185, 100 S.E.2d 355 (1957).

**What Warrant Should Charge.**—Under this section a warrant or indictment should charge the unlawful possession for sale, or sale, of illicit liquors or the sale of any liquors purchased from the county stores. *State v. May*, 248 N.C. 60, 102 S.E.2d 418 (1958).

**What State Must Prove.**—This section places upon the State only the burden of proving the defendant unlawfully had illicit liquors in his possession for sale. *State v. May*, 248 N.C. 60, 102 S.E.2d 418 (1958).

**Possession for Purpose of Sale Is Es-**



**sential Element.** — Where the defendant was charged with the possession of tax-paid liquor for the purpose of sale, and the court removed from the warrant the charge that the possession was for the purpose of sale, he removed from the jury an essential element of the charge, and a conviction under the warrant could not be had for unlawful possession. *State v. Poe*, 245 N.C. 402, 96 S.E.2d 5 (1957).

**Presumption of Intent to Sell Arising from Possession.**—Section 18-48 and this section are state-wide in application, and the possession of any quantity of nontax-paid liquor is without exception unlawful, and under § 18-11 raises the presumption, even though less than one gallon in quantity, that possession is for the purpose of sale, since the statutes are not irreconcilable but may be harmonized as related parts of a composite whole. *State v. Hill*, 236 N.C. 704, 73 S.E.2d 894 (1953), overruling *State v. Locky*, 214 N.C. 525, 199 S.E. 715 (1938); *State v. McNeill*, 225 N.C. 560, 35 S.E.2d 629 (1945); *State v. Peterson*, 226 N.C. 255, 37 S.E.2d 591 (1946). See note under § 18-11.

**One Charged with Violation of This Section Cannot Be Convicted under § 18-48.**—Where defendant was charged with violation of this section and there was no other count or charge in the warrant she could not be convicted under § 18-48, as these two statutes defining misdemeanors are on equal footing and neither prescribes nor includes a lesser offense or offense of lesser degree. *State v. McNeill*, 225 N.C. 560, 35 S.E.2d 629 (1945); *State v. Daniels*, 244 N.C. 671, 94 S.E.2d 799 (1956).

Where defendant was convicted in a recorder's court of possession of nontax-paid whiskey for the purpose of sale, and on appeal was convicted in the superior court of having in his possession nontax-paid whiskey, and was found not guilty of possession of nontax-paid whiskey for the purpose of sale, it was held that the judgment must be arrested, since defendant could not be prosecuted in the superior court on the original warrant except for an offense for which he was convicted in the inferior court. And the trial, conviction, and sentence in the superior court could not be upheld on the theory that possessing alcoholic beverages on which taxes have not been paid is a lesser offense included in the charge of possessing intoxicating liquor for the purpose of sale. *State v. Hall*, 240 N.C. 109, 81 S.E.2d 189 (1954).

A conviction on insufficient evidence on a warrant charging unlawful possession of illicit liquor for the purpose of sale under

this section, cannot be sustained on the ground that the evidence might be sufficient to sustain a conviction of possession of a quantity of nontax-paid liquor under § 18-48. *State v. Peterson*, 226 N.C. 255, 37 S.E.2d 591 (1946).

**Where a warrant charged generally that defendant had in his possession "nontax-paid" whiskey for the purpose of sale** it was held that upon the facts of the case the word "nontax-paid" was merely used to describe the whiskey and to designate it as unlawful rather than to restrict the offense charged to a violation of this section and therefore the prima facie presumption from the possession of three gallons of such whiskey, that the possession was for the purpose of sale, obtains. *State v. Merritt*, 231 N.C. 59, 55 S.E.2d 804 (1949).

**Evidence Insufficient to Carry Case to Jury.** — In prosecution under this section evidence tending to show that officers of the law were reluctantly admitted in defendant's house, that the officers heard whispering within the house before they were admitted, that in the kitchen there were defendant, his wife, and a man with whiskey on his breath, and in the front room a man and a woman, that they found in the kitchen a half-gallon jar, with a few drops of whiskey in it, and two glasses and a five-gallon bucket of slops, nearly full, smelling of liquor, and that there was fifty cents in change on the stove, was insufficient to overrule motion for judgment as of nonsuit. *State v. Peterson*, 226 N.C. 255, 37 S.E.2d 591 (1946).

In prosecution under this section where only evidence offered by the State was through its officers, including police officer's uncontradicted testimony that defendant said nontax-paid liquor found in the room was for sick child, such evidence negated possession for the purpose of sale, and was insufficient to carry case to jury. *State v. McNeill*, 225 N.C. 560, 35 S.E.2d 629 (1945).

**Evidence Sufficient for Jury.**—See *State v. Mitchell*, 260 N.C. 235, 132 S.E.2d 481 (1963).

Evidence tending to show that some eighteen gallons of nontax-paid liquor was found in defendant's home was sufficient to be submitted to the jury on a charge of unlawful possession of illicit liquor for the purpose of sale, the credibility of the exculpatory evidence being for the jury. *State v. Turner*, 253 N.C. 37, 116 S.E.2d 194 (1960).

**Applied in** *State v. Bell*, 264 N.C. 350, 141 S.E.2d 493 (1965).

**Stated in** *State v. Sawyer*, 233 N.C. 76, 62 S.E.2d 515 (1950).



Cited in *State v. Welborn*, 249 N.C. 268, 106 S.E.2d 204 (1958); *State v. Cobb*, 250 N.C. 234, 108 S.E.2d 237 (1959); *Taylor v. Parks*, 254 N.C. 266, 118 S.E.2d 779 (1961).

**§ 18-51. Drinking or offering drinks on premises of stores and public roads or streets; drunkenness, etc., at athletic contests or other public places.**—It shall be unlawful for any person to drink alcoholic beverages or to offer a drink to another person, or persons, whether accepted or not, at the place where the same is purchased from the county store, or the premises thereof, or upon any premises used or occupied by county boards for the purpose of carrying out the provisions of this article, or on any public road or street, and it shall be unlawful for any person or persons to be or become intoxicated or to make any public display of any intoxicating beverages at any athletic contest or other public place in North Carolina. The violation of this section shall constitute a misdemeanor and shall be punishable by a fine of not exceeding fifty (\$50.00) dollars or imprisoned for not more than thirty days in the discretion of the court. (1937, c. 49, s. 16; c. 411.)

**Origin and Purpose of Section.** — This section grew out of legislative authorization of the sale of liquor in A.B.C. stores, and sought to restrict its use after purchase. *State v. Fenner*, 263 N.C. 694, 140 S.E.2d 349 (1965).

"Other public place" was added to this section unquestionably to prevent a too narrow construction of the term "at any athletic contest," and not for the purpose of including public places of all kinds.

*State v. Fenner*, 263 N.C. 694, 140 S.E.2d 349 (1965).

The word "other" commonly occurs in a general expression, following specific designations, in statutes where the ejusdem generis rule is applied. *State v. Fenner*, 263 N.C. 694, 140 S.E.2d 349 (1965).

**Section Not General Law Respecting Public Drunkenness.** — See note to § 14-335.

**§ 18-52. Advertising permitted in newspapers, magazines and periodicals.**—It shall be lawful for newspapers, magazines and periodicals to accept and publish advertisements relating to wines, beers and other alcoholic beverages permitted to be sold and distributed under the laws of North Carolina. (1935, c. 465.)

**§ 18-53. Advertising by county A.B.C. stores and on billboards prohibited.**—It shall be unlawful for any county store to advertise anywhere, or by any means or method, alcoholic beverages which it has for sale and it shall not advertise or post its prices, other than in the store, or stores, which it operates, and in such stores it shall only state the brands or kinds of beverages and the price of each kind and such price list shall only be posted for public view in said store.

It shall be unlawful for any person, firm or corporation to erect or set up, or permit to be set up, any sign or billboard, or other device, containing any advertisement of alcoholic beverages as defined herein on his premises, and if the same shall be set up by any other person, then such owner or lessee of such premises shall not permit the same to remain thereon.

It shall be unlawful for any person, firm, or corporation to display, or permit to be displayed, upon any billboard, signboard, or any other similar advertising medium, any advertisement of any alcoholic beverages or any spirituous liquors as defined herein. (1937, c. 49, s. 17; c. 398.)

**Cross Reference.**—As to advertising provisions under the Turlington Act, see § 18-3.

**§ 18-54. Advertising by radio broadcasts prohibited.**—No firm, person or corporation in this State shall broadcast, or permit to be broadcast, any statement, speech, or any other message by whatsoever name called, over any radio broadcasting system doing business in this State, when such advertising matter tends to advertise alcoholic beverages as defined herein and the broadcast thereof originates in this State. (1937, c. 49, s. 18.)

**§ 18-55. Additional regulations as to advertising.**—The several county boards by and with the consent and approval of the State Board, shall have power to make such other rules and regulations as will prevent and tend to prevent advertisement of alcoholic beverages otherwise than is expressly prohibited herein and to publish such rules and regulations and to take effective measures to enforce the same. (1937, c. 49, s. 19.)

**§ 18-56. Salaries and expenses paid from proceeds of sales.**—All salaries and expenses incurred under the provisions of this article except those provided for in § 18-37 shall be paid out of the proceeds of the sales of the alcoholic beverages referred to in this article. All salaries and expenses of county boards and their employees shall be paid out of the receipts for their sales as operating expenses. (1937, c. 49, s. 20.)

**§ 18-57. Net profits to be paid into general fund of the various counties.**—After deducting the amount required to be expended for enforcement as herein provided and retaining sufficient and proper working capital, the amount to be determined by the board, and except as hereinbefore provided in chapters four hundred ninety-three and four hundred eighteen of the Public Laws of one thousand nine hundred thirty-five, the entire net profits derived from any stores shall be paid quarterly to the general fund of each respective county wherein county stores are operated. (1937, c. 49, s. 21; c. 411.)

**Local Modification.** — Brunswick: 1937, c. 269; Caswell: 1955, c. 40; Cumberland: 1941, c. 48; Edgecombe: 1951, c. 711; Franklin: 1937, c. 250, s. 2; Nash: 1951, c. 738; New Hanover: 1941, c. 135; Rockingham: 1965, c. 971.

**§ 18-58. Transportation into State; and purchases, other than from stores, prohibited.**—It shall be unlawful for any person, firm, or corporation, to purchase in or to bring into this State, any alcoholic beverage from any source, except from a county store operated in accordance with this article, except a person may purchase legally outside of this State and bring into the same for his own personal use not more than one gallon of such alcoholic beverage: Provided, that the cap or seal on the container or containers of said alcoholic beverages has not been opened or broken. A violation of this section shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (1937, c. 49, s. 22; 1955, c. 999.)

**Cross Reference.** — As to transportation to or through dry counties, see § 18-49.

**Section Modifies § 18-2.**—See note under § 18-2.

**The word "transport" means to carry or convey from one place to another,** and therefore a person transports intoxicating liquor if he carries it on his person or conveys it in a vehicle under his control or in any other manner, regardless of whether the liquor belongs to him or is in his custody. *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**Guilty Knowledge.** — This section relating to alcoholic liquors must be interpreted in the light of the common-law principles that guilty knowledge is an essential element of crime, and therefore a person cannot be held guilty of illegally transporting intoxicating liquors if he has no knowledge of the nature of the goods transported. *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**Even though the driver of an automobile**

**is accompanied by others,** this section cannot be construed to permit him to carry or convey more than one gallon of alcoholic beverages in his automobile. *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**One-Gallon Exemption Is Matter of Defense.**—The exemption from criminal liability for bringing into the State not more than one gallon of liquor is a matter of defense, and the defendant must bring his case within the exemption, either from the State's evidence or from his own. *State v. Holbrook*, 228 N.C. 582, 46 S.E.2d 842 (1948).

**Evidence** held to support charge of unlawfully transporting intoxicating liquor in a quantity in excess of one gallon. *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**Cited in** *State v. Suddreth*, 223 N.C. 610, 27 S.E.2d 623 (1943); *State v. Barnhardt*, 230 N.C. 223, 52 S.E.2d 904 (1949); *State v. Fuqua*, 234 N.C. 168, 66 S.E.2d 667 (1951).

**§ 18-59. Violations by member or employee of boards, cause for removal and punishable as misdemeanor.**—A violation of any of the provisions of this article by any person, firm or corporation, and the violation of any provision of this article, or any regulation adopted by any county board or by the State Board, by any member of the State Board, or any member of any county board, or any employee of either of said boards, shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court, and in addition thereto shall constitute sufficient cause for the removal of such person from either of said boards, or from his employment under either of said boards and in addition to the powers of the State Board to remove any of its employees or any member of any county board and the power of any county board to remove any of its employees from such employment, the court in which the said conviction is had shall have the power upon such conviction and as a part of its judgment thereon to remove such person from either of said boards or from the employment of either. (1937, c. 49, s. 23.)

**§ 18-60. Definition of "alcoholic beverage."** — The term "alcoholic beverage," as used in this article, is hereby defined to be and to mean alcoholic beverages of any and all kinds which shall contain more than fourteen per centum of alcohol by volume, and this article is not intended to apply to, or regulate, the possession, sale, manufacture or transportation of beer, wines or ales containing a lower alcoholic content than above specified, and whenever the term alcoholic beverages is used in this article, it shall be construed as defined in this section. (1937, c. 49, s. 24; c. 411; 1941, c. 339, s. 3.)

**Cross Reference.**—See note to § 18-48. "Intoxicating liquors" in § 18-1 includes the more restrictive term "alcoholic beverages" as defined in this section, and the terms are not synonymous. *State v. Welch*, 232 N.C. 77, 59 S.E.2d 199 (1950).

**Stated in** *State v. May*, 248 N.C. 60, 102 S.E.2d 418 (1958).

**Cited in** *State v. Bryant*, 245 N.C. 645, 97 S.E.2d 264 (1957); *Staley v. Winston-Salem*, 258 N.C. 244, 128 S.E.2d 604 (1962); *State v. Mitchell*, 260 N.C. 235, 132 S.E.2d 481 (1963).

**§ 18-61. County elections as to liquor control stores; application of Turlington Act; time of elections.**—No county liquor store shall be established, maintained or operated in this State, in any county thereof, until and unless there shall have been held in such county an election, under the same rules and regulations which apply to elections for members of the General Assembly, and at said election there shall be submitted to the qualified voters of such county the question of setting up and operating in such county a liquor store, or stores, as herein provided, and those favoring the setting up and operation of liquor stores in such county shall mark in the voting square to the left of the words, "for county liquor control stores" printed on the ballot, and those opposed to setting up and operating liquor stores in such county shall mark in the voting square to the left of the words, "against county liquor control stores," printed on the same ballot, and if a majority of the votes cast in such election shall be for county liquor stores, then a liquor store, or liquor stores, may be set up and operated in such county as herein provided, and if a majority of the votes cast at said election shall be against county liquor stores, then no liquor stores shall be set up or operated in said county under the provisions of this article.

Such election shall be called in such county by the board of elections of such county only upon the written request of the board of county commissioners therein, or upon a petition to said board of elections signed by at least fifteen per centum of the registered voters in said county that voted in the last election for Governor. In calling for such special liquor election the county board of elections shall give at least twenty days' public notice of same prior to the opening of the registration books, and the registration books shall remain open for the same



period of time before such special liquor election as is required by law for them to remain open for a regular election. A new registration of voters for such special liquor election is not required and all qualified electors who are properly registered prior to the registration for the special election, as well as those electors who register in said special liquor election, shall be entitled to vote in said election.

If any county while operating any such control store under the provisions of chapter four hundred ninety-three or four hundred eighteen of the Public Laws of one thousand nine hundred thirty-five or under the terms of this article shall hereafter under the provisions of this article hold an election and at such election a majority of the votes shall be cast "against county liquor control stores," then the county control board in such county shall within three (3) months from the canvassing of such vote and the declaration of the result thereof, close said stores and shall thereafter cease to operate the same. During this period of time, the county control board shall dispose of all alcoholic beverages on hand, all fixtures and all other property in the hands and under the control of the county control board and convert the same into money and shall, after making a true and faithful accounting, turn all money in its hands over to the general fund of the county. Thereafter, chapter one of the Public Laws of one thousand nine hundred twenty-three [§ 18-1 et seq.], being commonly known as the Turlington Act, shall be in full force and effect in such county, until and unless another election is held under the provisions of this article, in which a majority of the votes shall be cast "for county liquor control stores," except as modified by this article or any acts amendatory hereof.

No election under this section shall be held on the day of any biennial election for county officers, or within sixty days of such an election, and the date of such elections under this section shall be fixed by the board of elections of the county wherein the same is held.

No other election shall be called and held in any of the counties in the State under the provisions of this article within three years from the holding of the last election under this article. In any county in which an election was held either under the provisions of chapter four hundred ninety-three or chapter four hundred eighteen of the Public Laws of one thousand nine hundred thirty-five, an election may be called under the provisions of this article, provided no such election shall be called within three years of the holding of the last election. (1937, c. 49, s. 25; c. 431.)

In a county which has not elected to come under the Alcoholic Beverage Control Act, the Turlington Act, as modified by the later statute, is in full force and effect. *State v. Wilson*, 227 N.C. 43, 40 S.E.2d 449 (1946).

Quoted in *Hancock v. Bulla*, 232 N.C. 620, 61 S.E.2d 801 (1950).

**§ 18-62. Elections in counties now operating stores, not required for continued operation.**—Nothing herein contained shall be so construed as to require counties in which liquor stores have been established under chapters four hundred eighteen or four hundred ninety-three of the Public Laws of one thousand nine hundred thirty-five to have any further election in order to enable such counties to establish liquor stores, and as to such counties in which liquor stores are now being operated under chapters four hundred eighteen or four hundred ninety-three of the Public Laws of one thousand nine hundred thirty-five, such stores shall from February 22, 1937 be operated under the terms of this article. (1937, c. 49, s. 26.)

**Local Modification.**—Moore: 1937, c. 49, s. 26.

#### ARTICLE 4.

#### *Beverage Control Act of 1939.*

**§ 18-63. Title.**—This article shall be known as the Beverage Control Act of one thousand nine hundred thirty-nine. (1939, c. 158, s. 500.)

**Local Modification.** — The following laws are amendments to or modifications of Public Laws of 1933, c. 216, of which the Beverage Control Act of 1939 is a successor: Alamance (Elon College, Sylvan High School, and Cane Creek Church): 1933, cc. 381, 417; Bladen (Frenches Creek township): 1933, c. 475; Buncombe (Ridgecrest, Montreat, town of Weaverville): 1933, c. 396; Caswell (village of Yanceyville and Pelham M. E. Church, South): 1933, cc. 472, 508; Dare (Stumpy Point voting precinct): 1933, c. 455; Guilford (Guilford College and Oak Ridge Military Institute): 1933, cc. 369, 370, 406; Harnett (Campbell College): 1933, c. 398; Madison (Mars Hill College): 1933, c. 396; Mecklenburg (Davidson College): 1933, c. 313; Mitchell (town of Bakersville): 1933, c. 416; Moore (Quaker Children's Home): 1933, c. 454; Randolph (village of Worthville): 1933, c. 512; Sampson (Pineland Junior

College): 1933, c. 358; Union (Wingate Junior College): 1933, c. 454; Wake (Wake Forest College): 1933, c. 564; Warren (village of Macon): 1933, c. 395.

**Editor's Note.**—As to manufacture and possession of wine in Polk County, see Session Laws 1951, c. 750.

**Provisions in Pari Materia.** — The different provisions of Public Laws of 1939, c. 158, relative to granting license for the sale of beer and wine, are *pari materia* and must be read together as one connected whole. *McCotter v. Reel*, 223 N.C. 486, 27 S.E.2d 149 (1943).

**Sale of Beer.**—Generally speaking, it is unlawful to sell beer in North Carolina. But the sale thereof is not unlawful, provided the seller is duly licensed under, and makes sale in accord with the provisions of this article. *State v. Cochran*, 230 N.C. 523, 53 S.E.2d 663 (1949). And see §§ 18-126, 18-129 et seq.

**§ 18-64. Definitions.**—The term “beverages” as used in this article shall include:

- (1) Beer, lager beer, ale, porter, and other brewed or fermented beverages containing one-half of one per cent (1%) of alcohol by volume but not more than five per cent (5%) of alcohol by weight as authorized by the laws of the United States of America.
- (2) Unfortified wines, as used in this article, shall mean wine of an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose sugar and having an alcoholic content of not less than five per centum (5%) and not more than fourteen per centum (14%) of absolute alcohol, the per centum of alcohol to be reckoned by volume, which wine has been approved as to identity, quality and purity by the State Board of Alcoholic Control as provided in this chapter.

The term “person” used in this article shall mean any individual, firm, partnership, association, corporation, or other groups or combination acting as a unit.

The term “sale” as used in this article shall include any transfer, trade, exchange or barter in any manner or by any means whatsoever, for a consideration. (1939, c. 158, s. 501; 1941, c. 339, s. 4; 1945, c. 903, s. 3.)

**Editor's Note.**—For subsequent law exempting from its application beverages defined in this section, see § 18-49.4.

**Cited in** *State v. Wilson*, 237 N.C. 746, 75 S.E.2d 924 (1953); *Davis v. Charlotte*, 242 N.C. 670, 89 S.E.2d 406 (1955).

**§ 18-65. Regulations; statement required on container; application of other law.**—The beverages enumerated in § 18-64 may be manufactured, transported, or sold in this State in the manner and under the regulations hereinafter set out: Provided, however, that, except as otherwise provided by law, no wines shall be transported or sold in this State unless there be firmly fastened or impressed on the barrel, bottle, or other container in which the same may be a written statement showing that the same are not fortified and that the alcoholic content thereof reckoned by volume, is not more than fourteen per cent.

The possession, transportation, or sale of wines defined in § 18-64, subdivision (2) without such statement, and any misrepresentation made in any such statement, shall constitute a misdemeanor and be punished as provided in § 18-91. Except as otherwise provided by law, the manufacture, possession, transportation or sale of wines other than those defined in § 18-64, subdivision (2), including



fortified wines, shall be subject to all the provisions of chapter one of the Public Laws of one thousand nine hundred and twenty-three, commonly called the Turlington Act, as amended and supplemented, codified as § 18-1 et seq. (1939, c. 158, s. 502; 1941, c. 339, s. 4.)

Cited in *Davis v. Charlotte*, 242 N.C. 670, 89 S.E.2d 406 (1955).

**§ 18-66. Transportation.**—The beverages enumerated in § 18-64 may be transported into, out of or between points in this State by railroad companies, express companies or by steamboat companies engaged in public service as common carriers and having regularly established schedules of service upon condition that such companies shall keep accurate records of the character and volume of such shipments, the character and number of packages or containers, shall keep records open at all times for inspection by the Commissioner of Revenue of this State or his authorized agent, and upon condition that such common carrier shall make report of all shipments of such beverages into, out of or between points in this State at such times and in such detail and form as may be required by the Commissioner of Revenue.

The beverages enumerated in § 18-64 may be transported into, out of or between points in this State over the public highways of this State by motor vehicles upon condition that every person intending to make such use of the highways of this State shall as a prerequisite thereto register such intention with the Commissioner of Revenue in advance of such transportation, with notice of the kind and character of such products to be transported and the license and motor number of each motor vehicle intended to be used in such transportation. Upon the filing of such information, together with an agreement to comply with the provisions of this article, the Commissioner of Revenue shall without charge therefor issue a numbered certificate to each such owner or operator for each motor vehicle intended to be used for such transportation, which numbered certificate shall be prominently displayed on the motor vehicle used in transporting the products named in § 18-64. Every person transporting such products over any of the public highways of this State shall during the entire time he is so engaged have in his possession an invoice or bill of sale or other record evidence, showing the true name and address of the person from whom he has received such beverages, the character and contents of containers, the number of bottles, cases or gallons of such shipment, the true name and address of every person to whom deliveries are to be made. The person transporting such beverages shall, at the request of any representative of the Commissioner of Revenue, produce and offer for inspection said invoice or bill of sale or record evidence. If said person fails to produce invoice or bill of sale or record evidence, or if when produced, it fails to clearly and accurately disclose said information, the same shall be prima facie evidence of the violation of this article. Every person engaged in transporting such beverages over the public highways of this State shall keep accurate records of the character and volume of such shipments, the character and number of packages or containers, shall keep records open at all times for inspection by the Commissioner of Revenue of this State, or his authorized agent, and upon condition that such person shall make report of all shipments of such beverages into, out of or between points in this State at such times and in such detail and form as may be required by the Commissioner of Revenue.

The purchase, transportation and possession of beverages enumerated in § 18-64 by individuals for their own use are permitted without restriction or regulation. The provisions of this section as to transportation of beverages enumerated in § 18-64 by motor vehicles over the public highways of this State shall in like manner apply to the owner or operator of any boat using the waters of the State for such transportation, and all of the provisions of this section with respect to permit for such transportation and reports to the Commissioner of Revenue



by the operators of motor vehicles on public highways shall in like manner apply to the owner or operator of any boat using the waters of this State. (1939, c. 158, s. 503.)

**Sufficiency of Evidence.** — Evidence was sufficient to convict defendant of unlawful transportation of beer where it showed that he owned the truck used by him in the transportation of the beer; that he had in his truck sixty cases of beer which he was directed to deliver; that his truck was not registered for the purpose of transporting beer as required by law, and that he had no "bill of lading or anything else for the beer." *State v. McCullough*, 244 N.C. 11, 92 S.E.2d 389 (1956).

§ 18-67. **Manufacture.**—The brewing or manufacture of beverages for sale enumerated in § 18-64 shall be permitted in this State upon the payment of an annual license tax to the Commissioner of Revenue in the sum of five hundred dollars (\$500.00) for a period ending on the next succeeding thirtieth day of April and annually thereafter. The license specified in this section shall not be issued for the manufacture of the beverages described in § 18-64 (2) unless the applicant for license exhibits a valid permit from the State Board of Alcoholic Control to engage in the business of selling such beverages for resale, as provided in this chapter. Persons licensed under this section may sell such beverages in barrels, bottles, or other closed containers only to persons licensed under the provisions of this article for resale, and no other license tax shall be levied upon the business taxed in this section. The sale of malt, hops, and other ingredients used in the manufacture of beverages for sale enumerated in § 18-64 is hereby permitted and allowed: Provided, that any person engaged in the business of manufacturing in this State the wines described in § 18-64, subdivision (2) shall be required to pay the following tax based on the number of gallons manufactured:

Where not more than one hundred gallons are manufactured for sale . . . .	\$ 5.00
Where one hundred gallons and not more than two hundred gallons are manufactured for sale . . . . .	10.00
Where two hundred gallons and not more than five hundred gallons are manufactured for sale . . . . .	25.00
Where five hundred gallons and not more than one thousand gallons are manufactured for sale . . . . .	50.00
Where one thousand gallons and not more than two thousand five hundred gallons are manufactured for sale . . . . .	200.00
Where two thousand five hundred gallons or more are manufactured for sale . . . . .	250.00

Nothing in this article shall be construed to impose any tax upon any resident citizen of this State who makes native wines for the use of himself, his family and guests from fruits, grapes and berries cultivated or grown wild upon his own land. (1939, c. 158, s. 504; 1945, c. 903, s. 4.)

§ 18-68. **Bottler's license.**—Any person who shall engage in the business of receiving shipments of the beverages enumerated in § 18-64, subdivision (1) in barrels or other containers, and bottling the same for sale to others for resale, shall pay an annual license tax of two hundred fifty dollars (\$250.00); and any person who shall engage in the business of bottling the beverages described in § 18-64, subdivision (2), shall pay an annual license tax of two hundred fifty dollars (\$250.00): Provided, however, that any person engaged in the business of bottling the beverages described in § 18-64, subdivision (1) and also the beverages described in § 18-64, subdivision (2), or either, shall pay an annual license tax of four hundred dollars (\$400.00); provided further, the license provided by this section for the bottling of the beverages described in § 18-64 (2) shall not be issued to any person who does not have a permit to engage in the business of bottling the beverages described in § 18-64 (2) from the Board of Alcoholic Control as provided in this chapter. No other license

tax shall be levied upon the businesses taxed in this section, but licenses under this section shall be liable for the payment of the taxes imposed by § 18-81 in the manner therein set forth. (1939, c. 158, s. 505; 1941, c. 339, s. 4; 1945, c. 903, s. 5.)

**§ 18-69. Wholesaler's license.**—License to sell at wholesale, which shall authorize licensees to sell beverages described in § 18-64, subdivision (1) in barrels, bottles, or other containers, in quantities of not less than one case or container to a customer, shall be issued as a state-wide license by the Commissioner of Revenue. The annual license under this section shall be one hundred and fifty dollars (\$150.00) and shall expire on the next succeeding thirtieth day of April. The license issued under this section shall be revocable at any time by the Commissioner of Revenue for failure to comply with any of the conditions of this article with respect to the character of records required to be kept, reports to be made or payment of other taxes hereinafter set out.

Licensees to sell at wholesale the beverages described in § 18-64, subdivision (2) shall pay an annual license tax of one hundred fifty dollars (\$150.00): Provided, that a licensee to sell at wholesale the beverages described in § 18-64, subdivision (1) and the beverages described in § 18-64, subdivision (2) shall pay an annual license tax of two hundred fifty dollars (\$250.00); provided further, the license provided by this paragraph shall not be issued to any person who does not have a permit to engage in the business of selling at wholesale the beverages described in § 18-64 (2) from the Board of Alcoholic Control as provided in this chapter.

If any wholesaler maintains more than one place of business or storage warehouse from which orders are received or beverages are distributed a separate license shall be paid for each separate place of business or warehouse.

The owner or operator of every distributing warehouse selling, distributing or supplying to retail stores beverages enumerated in § 18-64 shall be deemed a wholesale distributor within the meaning of this article and shall be liable for the tax imposed in this section and shall comply with the conditions imposed in this article upon wholesale distributors of beverages with respect to payment of taxes levied in this article and bond for the payment of such taxes.

No county shall levy a tax on any business under the provisions of this section, nor shall any city or town, in which any person, firm, corporation or association taxed hereunder has its principal place of business levy and collect more than one fourth of the State tax levied under this section; nor shall any tax be levied or collected by any county, city or town on account of delivery of the products, beverages or articles enumerated in § 18-64. (1939, c. 158, s. 506; 1941, c. 339, s. 4; 1945, c. 903, s. 6.)

**§ 18-69.1. Prohibition against exclusive outlets.**—It shall be unlawful for any manufacturer, bottler or wholesaler of wine or malt beverages, whether licensed in this State or not, or any officer, director or an affiliate of such manufacturer, bottler or wholesaler either directly or indirectly:

- (1) To require by agreement or otherwise, that any retailer engaged in the sale of wine or malt beverages, purchase any such products from such person, firm or corporation to the exclusion in whole or in part of wine or malt beverages sold or offered for sale by other persons, firms or corporations in North Carolina; or
- (2) To have any financial interest direct or indirect in the business for which any retailer's permit has been issued under this article or in the premises where the business of any person to whom a retailer's permit has been issued hereunder is conducted; or
- (3) To lend or give to any person licensed hereunder as a retailer or his employee or to the owner of the premises on which the business of any such retailer is conducted any money, services, equipment, furniture,

fixtures or other things of value with which the business of such retailer is or may be conducted.

All of the above restrictions are subject to such exceptions as may be prescribed by the Board of Alcoholic Control having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this section. (1945, c. 708, s. 6; 1953, c. 1207, s. 1.)

**§ 18-69.2. Breweries forbidden to coerce or persuade wholesalers to violate chapter or unjustly cancel contracts or franchises; prima facie evidence of franchise; injunctions; revocation or suspension of licenses and permits.**—(a) It shall be unlawful, and punishable as provided in § 18-108, for any brewery or any officer, agent, or representative of any brewery:

- (1) To coerce, or attempt to coerce, or persuade, any person licensed to sell beer at wholesale, to enter into any agreement to take any action which would violate or tend to violate any provision of chapter 18 of the General Statutes of North Carolina, or any rules or regulations promulgated by the Board of Alcoholic Control of the State of North Carolina in accordance therewith; or
- (2) To unfairly, without due regard to the equities of such wholesaler, or without just cause or provocation, to cancel or terminate any agreement or contract, written or oral, or the franchise of such wholesaler existing on January 1, 1965, or thereafter entered into, to sell beer manufactured by the brewery; provided, also, that, from and after June 17, 1965, this provision shall be a part of any franchise, contract, agreement or understanding, whether written or oral, between any wholesale dealer in beer licensed to do business in North Carolina, and any brewery doing business with such licensed wholesaler, just as though said provision had been specifically agreed upon between said wholesaler and said brewery.

(b) The doing or accomplishment of any of the following acts shall constitute prima facie evidence of a contractual franchise relationship within the contemplation of this section, as between a licensed malt beverage wholesaler and a brewery, to wit:

- (1) The shipment, the preparation for shipment, or acceptance of any order by any brewery or its agent for any malt beverage, to a licensed wholesale distributor within the State of North Carolina.
- (2) The payment by any licensed wholesale distributor in the State or the acceptance of payment by any brewery or its agent for the shipment of an order of malt beverage intended for sale within the State.

(c) The superior court of North Carolina is hereby vested with jurisdiction and power to enjoin the cancellation or termination of a franchise or agreement between a wholesaler of beer and a brewery, at the instance of such wholesaler who is or might be adversely affected by such cancellation or termination, and, in granting an injunction, the superior court of North Carolina shall provide that no brewery shall supply the customers or territory of the wholesaler through servicing said territory or customers through other distributors or means, while said injunction is in effect.

(d) The Board of Alcoholic Control, State of North Carolina, is empowered to investigate any violations of this section and to furnish to the prosecuting attorney of any court having jurisdiction of the offense information with respect to any violations of this section, and the Board of Alcoholic Control, State of North Carolina, shall have the power to enforce conformance with the provisions of any injunction granted by the superior court under the terms of this section, and, if the court finds that there has been a violation of the provisions of any injunction granted by it, the Board of Alcoholic Control of North Carolina



may revoke or suspend the license of any wholesaler and the license or permit of any brewery to ship beer into the State of North Carolina. (1965, c. 1191.)

**§ 18-70. Sales on railroad trains.**—The sale of beverages enumerated in § 18-64 shall be permitted on railroad trains in this State to be sold only in dining cars, buffet cars, Pullman cars, or club cars, and for consumption on such cars upon payment to the Commissioner of Revenue of one hundred dollars (\$100.00) for each railroad system over which such cars are operated in this State for an annual state-wide license expiring on the next succeeding thirtieth day of April. No other license shall be levied upon licensees under this section, but every licensee under this section shall make a report to the Commissioner of Revenue on or before the tenth day of each calendar month covering sales for the previous month and payment of the tax on such sales at the rate of tax levied in this article. (1939, c. 158, s. 507.)

**§ 18-71. Salesman's license.**—License for salesmen, which shall authorize the licensee to offer for sale within the State or solicit orders for the sale of within the State beverages enumerated in this article, shall be issued by the Commissioner of Revenue upon the payment of an annual license tax of twelve dollars and fifty cents (\$12.50) to the Commissioner of Revenue, such license to expire on the next succeeding thirtieth day of April. License to salesmen shall be issued only upon the recommendation of the vendor whom they represent, and no other license tax shall be levied under this section. The license provided by this section shall not be issued to any person for offering for sale or soliciting orders for the beverages described in § 18-64 (2) who does not have a permit to engage in the business of offering for sale or soliciting orders for beverages described in § 18-64 (2) from the Board of Alcoholic Control as provided in this chapter. (1939, c. 158, s. 508; 1945, c. 903, s. 7.)

**§ 18-72. Character of license.**—License issued under authority of § 18-64, subdivision (1) shall be of two kinds:

- (1) "On premises" license which shall be issued for bona fide restaurants, cafes, cafeterias, hotels, lunch stands, drugstores, filling stations, grocery stores, cold drink stands, tea rooms, or incorporated or chartered clubs. Such license shall authorize the licensee to sell at retail beverages for consumption on the premises designated in the license, and to sell the beverages in original packages for consumption off the premises.
- (2) "Off premises" license which shall authorize the licensee to sell at retail beverages for consumption only off the premises designated in the license, and only in the immediate container in which the beverage was received by the licensee.

In a municipality the governing board of such municipality shall determine whether an applicant for license is entitled to a "premises" license under the terms of this article, and outside of municipalities such determination shall be by the board of commissioners of the county. (1939, c. 158, s. 509.)

**Local Modification.**—Swain: 1945, c. 961.

**Compulsory Issuance.**—An "on premises" license to sell beer is not available, as a matter of right, to any citizen who may qualify under the provisions of § 18-75. Compulsory issuance thereof is in any event limited to the businesses enumerated in this section. *McCotter v. Reel*, 223 N.C. 486, 27 S.E.2d 149 (1943).

The word "premises" when applied to a drive-in restaurant must be held to include the entire private property area designed for use by patrons while being

served. *Davis v. Charlotte*, 242 N.C. 670, 89 S.E.2d 406 (1955).

**City Cannot Prohibit Curb Sales by "On Premises" Licensees.**—A city ordinance prohibiting sale of wine and beer by car hop or curb service was enjoined insofar as it applied to plaintiffs holding valid "on premises" licenses issued pursuant to this section. *Davis v. Charlotte*, 242 N.C. 670, 89 S.E.2d 406 (1955).

Cited in *State v. Alverson*, 225 N.C. 29, 33 S.E.2d 135 (1945).

**§ 18-73. Retail license issued for sale of wines.**—License issued under authority of § 18-64, subdivision (2) shall be of two kinds:

- (1) "On premises" licenses shall be issued only to bona fide hotels, cafeterias, cafes and restaurants which shall have a Grade A rating from the State Department of Health, and shall authorize the licensees to sell at retail for consumption on the premises designated in the license; provided, no such license shall be issued except to such hotels, cafeterias, cafes and restaurants where prepared food is customarily sold and only to such as are licensed under the provisions of § 105-62; provided further, no such license shall be issued to persons or places which are licensed only under subsection (a) of § 105-62.
- (2) "Off premises" license shall authorize the licensee to sell said beverages at retail for consumption off the premises designated in the license, and all such sales shall be made in the immediate container in which the beverage was purchased by the licensee, and every such container shall have the tax stamp displayed thereon, as provided in § 18-81. (1939, c. 158, s. 509½; 1941, c. 339, s. 4; 1945, c. 903, s. 8.)

**Effect of City Zoning Ordinance.**—A restaurant owner's right to operate a restaurant being conceded, a city zoning ordinance could not set at naught a state-wide statute permitting the sale of wines in such restaurants. *Staley v. Winston-Salem*, 258 N.C. 244, 128 S.E.2d 604 (1962).  
Cited in *McCotter v. Reel*, 223 N.C. 486, 27 S.E.2d 149 (1943).

**§ 18-74. Amount of retail license tax.**—The license tax to sell at retail under § 18-64, subdivision (1) for municipalities shall be:

- (1) For "on premises" license, fifteen dollars (\$15.00).
- (2) For "off premises" license, five dollars (\$5.00).

The license tax to sell at retail under § 18-64, subdivision (2), shall be:

- (1) For "on premises" license, fifteen dollars (\$15.00).
- (2) For "off premises" license, ten dollars (\$10.00).

The rate of license tax levied in this section shall be for the first license issued to one person and for each additional license issued to one person an additional tax of ten per cent (10%) of the base tax, such increase to apply progressively for each additional license issued to one person. (1939, c. 158, s. 510; 1943, c. 400, s. 6; 1945, c. 708, s. 6.)

Cited in *Davis v. Charlotte*, 242 N.C. 670, 89 S.E.2d 406 (1955).

**§ 18-75. Who may sell at retail or wholesale.**—Every person making application for license to sell at retail or wholesale the beverages enumerated in § 18-64, if the place where such sale is to be made is within a municipality, shall make application first to the governing board of such municipality, and the application shall contain:

- (1) Name and residence of the applicant and the length of his residence within the State of North Carolina.
- (2) The particular place for which the license is desired, designating the same by a street and number, if practicable; if not, by such other apt description as definitely locates it.
- (3) The name of the owner of the premises upon which the business licensed is to be carried on.
- (4) That the applicant intends to carry on the business authorized by the license for himself or under his immediate supervision and direction.
- (5) A statement that the applicant is a citizen and resident of North Carolina and not less than twenty-one years of age; that he has not been convicted of, or entered a plea of guilty or nolo contendere to, a felony or other crime involving moral turpitude within the past three (3) years; or a violation of the prohibition laws, either State or federal, within the past two (2) years.

The application must be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If it appears from the statement of the applicant or otherwise that he has at any time been convicted of, or entered a plea of guilty or *nolo contendere* to, a felony or other crime involving moral turpitude within the past three (3) years, or that he has, within the two (2) years prior to the filing of the application, been adjudged guilty of violating the prohibition laws, either State or federal, or that he has within two (2) years prior to the filing of the application completed a sentence for violation of the prohibition laws, such license shall not be granted. If it appears that any false statement is knowingly made in any part of the application and license received thereon, the license shall be revoked and the applicant subjected to the penalty provided by law for misdemeanors. Before issuing a license, the governing body of the municipality shall be satisfied that the statements required by subdivisions (1), (2), (3), (4), and (5) of this section are true.

Neither the State nor any city or county shall issue a license under this article to any person, firm, or corporation who is not a citizen of the United States and who has not been a bona fide resident of the State of North Carolina for one (1) year. Provided, that if the applicant is a corporation, the requirement as to residence shall not apply to the officers, directors, or stockholders of the corporation; however, such residence requirement shall apply to any such officer, director or stockholder, agent or employee who is also the manager and in charge of the premises for which the permit is applied for, but the governing body of the county or municipality may, in its discretion, waive such requirement. No resident of the State shall obtain a license under this article and employ or receive aid from a nonresident for the purpose of defeating this requirement. No license shall be issued to a poolroom or billiard parlor or any person, firm or corporation operating same for the sale of wine as defined in G.S. 18-64, subdivision (2). Any person violating this paragraph shall be guilty of a misdemeanor, and upon conviction shall be imprisoned not more than thirty (30) days or fined not more than two hundred dollars (\$200.00). (1939, c. 158, s. 511; 1945, c. 708, s. 6; 1947, c. 1098, s. 1; 1963, c. 426, s. 3; c. 1188.)

**Cross Reference.**—See § 18-72 and note thereto. and inserted the present second sentence therein.

**Editor's Note.**—The first 1963 amendment rewrote subdivision (5) and the second sentence of the next-to-last paragraph of this section.

The second 1963 amendment rewrote the first sentence of the last paragraph

**Cited in** *Martin v. Holly Springs*, 230 N.C. 388, 53 S.E.2d 161 (1949); *Davis v. Charlotte*, 242 N.C. 670, 89 S.E.2d 406 (1955); *Staley v. Winston-Salem*, 258 N.C. 244, 128 S.E.2d 604 (1962).

**§ 18-76. County license to sell at retail.**—License to sell at retail shall be issued by the board of commissioners of the county, and application for such license shall be made in the same manner and contain the same information set out in § 18-75 with respect to municipal license. If the application is for license to sell within a municipality, the application must also show that license has been granted the applicant by the governing board of such municipality. The granting of a license by the governing board of a municipality shall determine the right of an applicant to receive a county license upon compliance with the conditions of this article.

If the application is for license to sell outside of a municipality within the county, the application shall also show the distance to the nearest church or public or private school from the place at which the applicant purposes to sell at retail. No license shall be granted to sell within three hundred feet of any public or private school buildings or church building outside of incorporated cities and towns: Provided, the restriction set forth in this sentence shall not apply to unincorporated towns and villages having police protection.

The clerk of the board of commissioners of each county shall make prompt



report to the Commissioner of Revenue of each license granted by the board of commissioners of such county. The county license fee shall be fixed at (1) twenty-five dollars (\$25.00) for "on premises" license and (2) five dollars (\$5.00) for "off premises" license, for the sale of beverages described in § 18-64, subdivision (1), and twenty-five dollars (\$25.00), for the sale of beverages described in § 18-64, subdivision (2) and the same shall be placed in the county treasury, for the use of the county. (1939, c. 158, s. 512; 1941, c. 339, s. 4; 1943, c. 400, s. 6.)

**Local Modification.**—Anson: 1941, c. 331; lin: 1959, c. 441; Guilford: 1949, c. 1140; Avery: 1945, c. 794; Currituck (Poplar Madison: 1945, c. 794; Swain: 1945, c. Branch township): 1937, c. 390; Frank- 961.

**§ 18-77. Issuance of license mandatory; sales during religious services.**—Except as herein provided it shall be mandatory that the governing body of a municipality or county issue license to any person applying for the same when such person shall have complied with requirements of this article: Provided, the governing board of any county or city which has reason to believe that any applicant for license has, during the preceding license year, committed any act or permitted any condition for which his license was, or might have been revoked under § 18-78 or 18-78.1, said governing board shall be authorized to hold a hearing concerning the issuance of license to said applicant at a designated time and place, of which the applicant shall be given ten days' notice; at said hearing the applicant may appear, offer evidence, and be heard, and said governing body shall make findings of fact based on the evidence at said hearing and shall enter said findings in its minutes; if from said evidence the governing body shall find as a fact that during the preceding license year the applicant committed any act or permitted any condition for which his license was, or might have been, revoked under §§ 18-78 and 18-78.1, the governing body may refuse to issue license to said applicant. Provided further, that the applicant may and shall have the right to appeal from an adverse decision to the superior court of said county where and when the matter shall be heard, as by law now provided for the trial of civil actions; that said notice of appeal may be given at the time of the hearing or within ten days thereafter, and said cause upon appeal shall be docketed at the next ensuing term of civil superior court in said county. Provided, further, no person shall dispense beverages herein authorized to be sold, within fifty feet of a church building in an incorporated city or town, or in a city or town having police protection whether incorporated or not, while religious services are being held in such church, or within three hundred feet of a church building outside the incorporate limits of a city or town while church services are in progress: And provided further that this section shall not apply in any territory where the sale of wine and/or beer is prohibited by special legislative act. And provided further, that such governing bodies in the counties of Alamance, Alexander, Ashe, Avery, Chatham, Clay, Duplin, Granville, Greene, Haywood, Jackson, Macon, Madison, McDowell, Montgomery, Nash, Pender, Randolph, Robeson, Sampson, Transylvania, Vance, Watauga, Wilkes, Yadkin, or any municipality therein, the City of Greensboro in Guilford County and the town of Aulander, shall be authorized in their discretion to decline to issue the "on premises" licenses provided for in subdivision (1) of § 18-73. The governing bodies in the counties of Alamance, Alexander, Ashe, Avery, Bertie, Chatham, Clay, Duplin, Granville, Greene, Haywood, Jackson, Madison, McDowell, Montgomery, Nash, Pender, Randolph, Robeson, Sampson, Transylvania, Watauga, Wilkes, Yadkin, or municipalities therein, and the town of Aulander, shall be authorized to prohibit the sale of beer and/or wine between the hours of 12:01 A. M. on Sundays and midnight Sunday night. (1939, c. 158, s. 513; c. 405; 1945, c. 708, s. 6; cc. 934, 935, 1037; 1947, c. 932.)

**Local Modification.**—Avery: 1945, c. 794; **Cross Reference.**—For other restrictions Bertie: 1949, c. 1059; Madison: 1945, c. on the sale of wine and beer, see §§ 18-105 through 18-107.

**Editor's Note.**—For act purporting to extend the provisions of this section to Burke County, see Session Laws 1945, c. 1031.

**Cited in** McCotter v. Reel, 223 N.C. 486,

27 S.E.2d 149 (1943); Davis v. Charlotte, 242 N.C. 670, 89 S.E.2d 406 (1955); Staley v. Winston-Salem, 258 N.C. 244, 128 S.E.2d 604 (1962).

**§ 18-78. Revocation or suspension of license or permit; confiscation of beverages not meeting standards of State Board of Alcoholic Control; rule making power of Board; refusal to surrender permit. —**

(a) If any licensee violates any of the provisions of this article or any rules and regulations under authority of this article or fails to superintend in person or through a manager, the business for which the license was issued, or allows the premises, with respect to which the license was issued, to be used for any unlawful, disorderly, or immoral purposes, or knowingly employs in the sale or distribution of beverages any person who has been convicted of, or entered a plea of guilty or nolo contendere to, a felony involving moral turpitude (federal or State) within the past three (3) years, or adjudged guilty of violating the prohibition laws (federal or State) within two (2) years, or leaves the licensed premises in charge of any person who has had a license or permit for the sale of beverages revoked within the past two (2) years, or otherwise fails to carry out in good faith the purposes of this article, the license of any such person may be revoked or suspended by the governing board of the municipality or by the board of county commissioners after the licensee has been given an opportunity to be heard in his defense.

(b) The State Board of Alcoholic Control shall have the authority to fix such standards for the beverages described in § 18-64 (1) as are determined by said Board to best protect the public against beverages containing deleterious, harmful or impure substances or elements, or an improper balance of elements, and against spurious or imitation beverages unfit for human consumption; to test the products described in § 18-64 (1) possessed or offered for sale or sold in this State and to make chemical or laboratory analyses of such beverages or to determine in any other manner whether such beverages meet the standards established by said Board; to confiscate and destroy any such beverages not meeting such standards; to enter and inspect any premises on which such beverages are possessed or offered for sale; to examine any and all books, records, accounts, invoices or other papers or data which in any way relate to the possession or sale of such beverages; and to take all proper steps for the prosecution of persons violating the provisions of this section, and for carrying out the provisions and intent thereof; provided the owner of said beverages confiscated shall be served with written notice to show cause within five days before the Board why the order should not be made permanent; and no beverages shall be destroyed until the order is final; provided further that the said owner shall have the right to appeal from the ruling of the said Board to the superior court of the county in which the said beverages were confiscated within ten (10) days from the final order of the said Board.

(c) Whenever any license or permit which has been issued by any municipality, any board of county commissioners, the Commissioner of Revenue, or by the Board of Alcoholic Control has been revoked, the State ABC Board may at its discretion refuse to issue a permit or license for said premises to any person for any period not to exceed six months after the revocation of such permit or license.

(d) The State Board of Alcoholic Control shall have the power to adopt, repeal and amend rules and regulations to carry out the provisions of this article and to govern the distribution, merchandising and advertising of wine and malt beverages and the Board may revoke or suspend the State permit of any licensee for a violation of the provisions of this article or of any rule or regulation adopted by said Board. Whenever there shall be filed with the State Board of Alcoholic Control a certified copy of a judgment of a court convicting a licensee of a violation of the State or federal prohibition laws, or any of the provisions of this



article or of any rule or regulation issued by said Board, said Board may suspend or revoke the permit of such licensee and shall serve a written notice of such suspension or revocation upon the licensee either by requiring the delivery of such notice to the licensee in person by an agent of the Board or by sending same by registered mail to his last known post office address. Except as provided in the preceding sentence, before the State permit authorizing the sale of the beverages enumerated in § 18-64 may be revoked or suspended, the Board shall give the affected permittee such notice and hearing as is required by chapter 18 of the General Statutes for the type of permit concerned. Upon such hearings the duly authorized agents of the Board may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers and documents belonging to the permittee. The revocation or suspension of a permit issued by the State Board of Alcoholic Control shall automatically revoke or suspend any and all State, county and municipal licenses issued to such licensee under the authority of this article, and the revocation or suspension of either a State, county or municipal license shall automatically revoke or suspend any other licenses issued to the licensee under the authority of this article.

(e) Any person who shall refuse to surrender a wine or malt beverage permit on demand under authority of the Board, after such permit has been duly cancelled, suspended or revoked, shall be guilty of a misdemeanor. Notices, orders or demands issued by the Board for the surrender of such permits may be served and executed by the inspectors employed by the Board, and such inspectors, while serving and executing such notices, orders or demands, shall have all the power and authority possessed by peace officers when serving and executing warrants charging violation of the criminal laws of the State.

(f) Upon the appeal to the superior court of decisions of the Board suspending or revoking licenses or permits or disapproving applications for licenses or permits and the appealing parties request a transcript of the entire record or a portion thereof, the same shall be furnished to the appealing parties upon payment to the Board of a fee of fifty cents (50¢) per page, but in no event shall the minimum fee be less than twenty-five dollars (\$25.00) per copy of the record. (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, s. 14; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1963, c. 426, ss. 4, 5.)

**Cross Reference.**—See also § 18-91.

**Editor's Note.**—For brief comment on the 1949 amendment, see 27 N.C.L. Rev. 463.

The 1963 amendment rewrote subsection (a) and added subsection (f).

**Legislation for Revocation and Suspension of Permits Is Constitutional.** — The legislation for the revocation or suspension of a retail beer permit for violation of § 18-78.1 is an exercise of the police power of the State in the interests of public morals and welfare, is reasonable, bears a real and substantial relationship to the public purpose sought to be accomplished by the legislature in the Beverage Control Act, tends to preserve public morals and welfare, and is not in violation of Article I, § 17, of the North Carolina Constitution, as contended by petitioners. *Boyd v. Allen*, 246 N.C. 150, 97 S.E.2d 864 (1957).

**Nature of Proceedings to Suspend Beer Permit.**—A proceeding by the State Board of Alcoholic Control to suspend a beer

permit for alleged violations by the holder of § 18-78.1, is an administrative proceeding, which does not involve any criminal liability of the holder of such permit. *Boyd v. Allen*, 246 N.C. 150, 97 S.E.2d 864 (1957).

**The Board's findings are conclusive if supported by material and substantial evidence.** *Freeman v. Board of Alcoholic Control*, 264 N.C. 320, 141 S.E.2d 499 (1965).

**And Its Decision Cannot Be Reversed by Jury Verdict.**—The verdict of the jury in a criminal prosecution does not have the effect of reversing the decision of the Board of Alcoholic Control. *Freeman v. Board of Alcoholic Control*, 264 N.C. 320, 141 S.E.2d 499 (1965).

**Findings Held to Support Judgment Suspending Permit.**—Findings of fact, supported by evidence, that the holders of a beer permit sold whiskey on the premises, and sold beer consumed by the purchaser on the premises after closing hours



and at a time when the sale of beer was prohibited by law, support judgment suspending the permit, notwithstanding the further finding that the holders had no knowledge of the unlawful conduct of the employees. *Boyd v. Allen*, 246 N.C. 150, 97 S.E.2d 864 (1957).

**Evidence of Age of Person to Whom Licensee Sold Beer.**—Testimony of officers that a person who had bought beer from a licensee declared he was under eighteen is incompetent as hearsay, and a certified copy of a birth certificate without testimony of any person having knowledge thereof that it was the record of the purchaser of the beer is incompetent to

prove the age of the purchaser, and therefore such evidence is insufficient to sustain a finding of the State Board of Alcoholic Control that the licensee sold beer to a minor or failed to give his licensed premises proper supervision. *Thomas v. State Bd. of Alcoholic Control*, 258 N.C. 513, 128 S.E.2d 884 (1963).

**As to dismissal of certiorari to review revocation of license** by town authorities for violation of this section, see *Harney v. Mayor & Bd. of Comm'rs*, 229 N.C. 71, 47 S.E.2d 535 (1948).

**Applied** in *Sinodis v. State Bd. of Alcoholic Control*, 258 N.C. 282, 128 S.E.2d 587 (1962).

**§ 18-78.1. Prohibited acts under license for sale of malt beverages and wines for consumption on or off premises.**—No holder of a license authorizing the sale at retail of beverages, as defined in § 18-64, and article 5, for consumption on or off the premises where sold, or any servant, agent, or employee of the licensee, shall do any of the following upon the licensed premises:

- (1) Knowingly sell such beverages to any person under eighteen (18) years of age.
- (2) Knowingly sell such beverages to any person while such person is in an intoxicated condition.
- (3) Sell such beverages upon the licensed premises or permit such beverages to be consumed thereon, on any day or at any time when such sale or consumption is prohibited by law.
- (4) Permit on the licensed premises any disorderly conduct, breach of peace, or any lewd, immoral, or improper entertainment, conduct, or practices.
- (5) Sell, offer for sale, possess, or knowingly permit the consumption on the licensed premises of any kind of alcoholic liquors the sale or possession of which is not authorized by law. (1943, c. 400, s. 6; 1945, c. 708, s. 6; 1949, c. 974, s. 15; 1959, c. 745, s. 2; 1963, c. 426, s. 6.)

**Cross Reference.**—See § 18-91 and note to § 18-78.

**Editor's Note.**—See 27 N.C.L. Rev. 463, as to effect of 1949 amendment.

The 1963 amendment made this section applicable to holders of "off-premises" as well as "on-premises" licenses. It also inserted "and article 5" near the middle of the first paragraph.

**"Knowingly."**—It appears by the punctuation that the word "knowingly" does not modify sell, offer for sale, or possess, but does modify "permit the consumption on the premises." *Campbell v. North Carolina State Bd. of Alcoholic Control*, 263 N.C. 224, 139 S.E.2d 197 (1964).

**Proprietor Responsible Even If One Carries His Own Beverage.**—The proprietor is responsible if he knowingly permits another to drink on his premises, even if he carried his own beverage. *Campbell v. North Carolina State Bd. of Alcoholic Control*, 263 N.C. 224, 139 S.E.2d 197 (1964).

**Evidence of Age of Person to Whom Licensee Sold Beer.**—See note to § 18-78.

**Applied** in *Boyd v. Allen*, 246 N. C. 150, 97 S.E.2d 864 (1957); *Sinodis v. State Bd. of Alcoholic Control*, 258 N.C. 282, 128 S.E.2d 587 (1962).

**Cited** in *Davis v. Charlotte*, 242 N.C. 670, 89 S.E.2d 406 (1955).

**§ 18-79. State license.**—Every person who intends to engage in the business of retail sale of the beverages enumerated in § 18-64, subdivision (1) shall also apply for and procure a State license from the Commissioner of Revenue.

For the first license issued to each licensee five dollars (\$5.00), and for each additional license issued to one person an additional tax of ten per cent (10%) of the five dollars base tax shall be charged. That is to say, that for the second license issued the tax shall be five dollars and fifty cents (\$5.50) annually, for third license six dollars (\$6.00) annually, and an additional fifty cents (50c.)

per annum for each additional license issued to such person. (1939, c. 158, s. 515.)

Cited in *Davis v. Charlotte*, 242 N.C. 670, 89 S.E.2d 406 (1955).

**§ 18-80. State license to sell wine at retail.**—Every person who intends to engage in the business of selling wines as defined in § 18-64, subdivision (2) shall procure a State license for such business which license shall in all cases be issued under the same restrictions, rules and regulations as set out in this article for the issuance of license for the sale of beverages described in § 18-64, subdivision (1) and for which license the following schedule of taxes is hereby levied:

- (1) For "on premises" license twenty-five dollars ..... \$25.00
- (2) For "off premises" license five dollars ..... 5.00

Such retail license shall authorize the sale of the beverages described in this section only on the premises described in the license, and if the same person operates more than one place at which said beverages are sold at retail, he shall obtain a license for each such place and pay therefor the license tax provided in this section.

If the license issued to any person by any municipality or county to sell the beverages referred to in this article shall be revoked by the proper officers of such municipality or county, or by any court, it shall be the duty of the Commissioner of Revenue to revoke the State license of such licensee; and in such event, the licensee shall not be entitled to a refund of any part of the license tax paid.

It shall be unlawful for any wholesale licensee to make any sale or delivery of the beverages described in § 18-64, subdivision (2) to any person except persons who have been licensed to sell such beverages at retail, as prescribed in this article.

It shall be unlawful for any retail licensee to purchase any of the beverages described in § 18-64, subdivision (2) from any person except wholesale licensees maintaining a place of business within this State and duly licensed under the provisions of this article. (1939, c. 158, s. 516; 1941, c. 339, s. 4.)

**§ 18-81. Additional tax.** — (a) In addition to the license taxes herein levied, a tax is hereby levied upon the sale of beverages enumerated in § 18-64, subdivision (1), of seven dollars and fifty cents (\$7.50) per barrel of thirty-one gallons, or the equivalent of such tax in containers of more or less than thirty-one gallons, and in bottles or other containers of not more than six ounces, a tax of one and one-fourth cents (1¼¢) per bottle or container, and in bottles or other containers of more than six ounces and not more than twelve ounces, a tax of two and one-half cents (2½¢) per bottle or container, and in bottles or containers of the capacity of one quart, or its equivalent, a tax of six and two-thirds cents (6⅔¢) per bottle or container: Provided fruit cider of alcoholic content not exceeding that provided in this article may be sold in bottles or other containers of not more than six ounces at a tax of five-eighths of a cent (⅝ths of 1¢) per bottle or container.

Manufacturers and bottlers may, at their option, pay the tax levied in this subsection at the rate of twenty-one one hundredths of a cent (.21¢) per ounce when the beverages taxed herein contained in bottles of over six ounces.

(a1) In addition to all other taxes levied in this chapter, there is hereby levied an additional tax or surtax upon the sale of beverages enumerated in G.S. 18-64, subdivision (1), of three dollars (\$3.00) per barrel of thirty-one gallons, or the equivalent of such tax in containers of more or less than thirty-one gallons, and in bottles or other containers of not more than six ounces, a tax of one-half of one cent (½¢) per bottle or container, and in bottles or other containers of more than six ounces and not more than twelve ounces, a tax of one cent (1¢) per bottle or container, and in bottles or containers of the capacity of one quart, or its equivalent, a tax of two and two-thirds cents (2⅔¢) per bottle or container.

Notwithstanding any provisions of subsection (t) of this section, none of the revenues collected pursuant to the tax imposed by this subsection shall be allocated or distributed to any county or municipality, but all of said revenue derived from the increase in tax rates imposed by this subsection shall be paid into the general fund of the State. Every person, firm or corporation who owns or possesses any of the beverages enumerated in subdivision (1) of G.S. 18-64 on July 1, 1955, for the purpose of sale in this State shall file with the Commissioner of Revenue not later than July 20, 1955, a complete inventory of such beverages and pay to the Commissioner of Revenue the tax imposed by this subsection with respect to all such beverages on hand on said July 1, 1955. The Commissioner of Revenue shall prescribe the form and manner of making such inventory reports and the method of evidencing the payment of the tax herein imposed with respect to said inventory of said beverages.

Manufacturers and bottlers may, at their option, pay the tax levied in this subsection at the rate of nine-one-hundredths of a cent (.09¢) per ounce when the beverages taxed herein are contained in bottles of over six ounces.

(a2) Notwithstanding any other provisions of subsection (a) of G.S. 18-81, as amended by chapter 1313 of the 1955 Session Laws, the rate of the tax therein imposed in said subsection (a) of G.S. 18-81 with respect to beverages described in subdivision (1) of G.S. 18-64 shall be one and one-half cents (1½¢) per bottle or container with respect to such beverages in bottles or other containers of exactly seven ounces.

Notwithstanding any other provisions of subsection (a1) of G.S. 18-81, as enacted by chapter 1313 of the 1955 Session Laws, the rate of additional tax or surtax therein imposed in said subsection (a1) of G.S. 18-81, said subsection being an amendment to G.S. 18-81, with respect to beverages described in subdivision (1) of G.S. 18-64 shall be six-tenths of one cent (.6¢) per bottle or container with respect to such beverages in bottles or other containers of exactly seven ounces.

Except as herein provided, all provisions of article 4 of chapter 18 of the General Statutes shall be applicable with respect to the taxes imposed by this subsection in the same manner and to the same extent said provisions are applicable to other taxes imposed in said article with respect to beverages described in subdivision (1) of G.S. 18-64.

The provisions of this subsection shall not be applicable with respect to beverages in bottles or containers in other than those of exactly seven ounces, and the provisions of G.S. 18-81, as amended by said chapter 1313, above referred to, shall be applicable to said beverages in any other size containers, and the taxes therein imposed with respect to beverages in containers of more than six but not more than twelve ounces shall be applicable with respect to said beverages in containers of more than seven but not more than twelve ounces.

(b) The payment of the tax imposed by subsections (a) and (a1) of this section shall be evidenced as to containers of one quart, or its equivalent, or less, by the affixing of crowns or lids to such containers in which beverages are placed, received, stored, shipped, or handled, and upon which the tax has been paid at the rate prescribed in subsections (a) and (a1) of this section.

(c) Except as may be otherwise provided herein, each manufacturer or bottler manufacturing, selling or delivering beverages in this State shall, within twenty-four hours after the beverages are placed in original containers or bottles, and prior to delivery of any container of beverages to any wholesaler, distributor, retailer, jobber, or any other person whatsoever in this State, affix the proper crown or lid to each container.

(d) Except as may be otherwise provided herein, and unless such crowns or lids have been previously affixed, such crowns or lids shall be affixed as herein provided by each distributor or wholesaler in this State within twenty-four hours



after such beverages come into the possession of such wholesaler and prior to the delivery of any container thereof to any retailer or other person in this State.

(e) The Commissioner of Revenue shall prescribe, prepare, furnish and sell the crowns or lids provided for in this section under rules and regulations prescribed by him, and all such crowns and lids shall carry the following words: "N. C. Tax Paid," and shall be so designed as to enable the manufacturer or bottler to place his brand or trade mark thereon, and they shall be purchased by the manufacturer or bottler or other person after the payment of the tax imposed by this article, only from such persons, firms or corporations as may be designated as manufacturers of such crowns and lids by the Commissioner of Revenue. The Commissioner of Revenue is authorized to enter into contracts on behalf of the State with one or more manufacturers for the manufacture, sale and distribution of such crowns or lids and shall require of such persons, firms and corporations so manufacturing, selling and distributing such crowns or lids a bond or bonds with a company authorized to do business in this State as surety payable to the State of North Carolina in such penalty and upon such conditions as in the opinion of the Commissioner of Revenue will adequately protect the State. The crowns and lids shall be manufactured, sold and distributed at the cost of the taxpayer. No manufacturer or bottler will be allowed to purchase the crowns or lids prescribed by this section unless such bottler or manufacturer has a valid permit from the federal government and the State of North Carolina, or the state in which such manufacturer or bottler is located, to manufacture, bottle, or sell the beverages herein described. The crowns and lids shall be sold by the Commissioner of Revenue at a discount of two per cent (2%) as sole compensation for North Carolina tax-paid crown and lid losses sustained in the process of production of malt beverages. No compensation or refund shall be made for tax-paid malt beverages given as free goods, or advertising, and losses, sustained by spoilage and breakage incident to the sale and distribution of malt beverages.

(f) At the time of delivering beverages to any person, firm or corporation in this State, each manufacturer or bottler shall make a true duplicate invoice showing the date of delivery, the amount and value of each shipment of beverages delivered, and the name of the purchaser to whom the delivery is made, and shall retain the same for a period of two years, subject to the use and inspection of the Commissioner of Revenue or his agents.

(g) Persons operating boats, dining cars, buffet cars or club cars upon or in which beverages are sold shall not be required to evidence the payment of the tax herein provided for by affixing crowns or lids as herein provided, but instead shall keep such records of the sales of such beverages in this State as the Commissioner of Revenue shall prescribe and shall submit monthly reports of such sales to the Commissioner of Revenue upon a form prescribed therefor by the Commissioner of Revenue, and shall pay the tax levied under this article at the time such reports are filed.

(h) It is the intent and purpose of this section to require all manufacturers and bottlers and other persons, except as herein provided, to affix the crowns or lids provided for herein to all original containers in which beverages are normally placed, prepared for market, received, sold or handled, before such beverages are sold, offered for sale, or held for sale within this State.

(i) Any person, firm or corporation, except as herein provided, who shall sell the beverages enumerated in § 18-64, subdivision (1) to wholesalers, retailers, or consumers which do not have affixed thereto the crowns or lids required by this section, or who shall purchase, receive, transport, store, or possess any beverage in containers to which the crowns or lids required herein are not affixed, shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court, and, in addition thereto, such person shall be liable for double the amount of the tax due under this article and the Commissioner of Revenue shall have authority to assess said tax and penalty and cause the same

to be collected in the same manner provided for the collection of other taxes levied in this article.

(j) Manufacturers, bottlers, or vendors of beverages enumerated in § 18-64, subdivision (1), from without this State, shall affix the crowns or lids to original containers of such beverages to be sold, offered for sale, held for sale, delivered or transported for delivery in this State.

(k) The Commissioner of Revenue shall promulgate rules and regulations to relieve manufacturers or bottlers of beverages from the liability to affix tax-paid crowns or lids to such containers of such beverages as are intended to be shipped and are thereafter shipped out of this State by such manufacturers or bottlers for resale out of this State or for use or consumption by or on ocean-going vessels which ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for use of such vessel.

(l) Any person who falsely or fraudulently makes, forges, alters, or counterfeits any crowns or lids prescribed by the Commissioner of Revenue under the provisions of this section, or causes or procures to be falsely or fraudulently made, forged, altered, or counterfeited any such crowns or lids, or knowingly or wilfully utters, passes or tenders as true any such false, forged, altered, or counterfeited crowns or lids, or uses more than once any crown or lid provided for and required by this article, or uses a crown or lid other than that prescribed herein for the purpose of evading the tax imposed under this article, or for the purpose of aiding or abetting others to evade the tax imposed under this article, shall be guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the State's prison for not more than five years, or by a fine of not more than five thousand dollars (\$5,000.00), or by both such fine and imprisonment in the discretion of the court.

(m) Any person, firm or corporation having in his possession a container or containers of beverages not bearing the crowns or lids required to be affixed to such container, or who fails to produce upon demand by the Commissioner of Revenue or his agent, invoices of all beverages purchased or received by him within two years prior to such demand, unless upon satisfactory proof it is shown that such nonproduction is due to providential or other causes beyond his control, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(n) Any person who shall fail, neglect, or refuse to comply with or shall violate any provisions of this section, for which no specific penalty is provided, or who shall refuse to permit the Commissioner of Revenue or his agents to examine his books, papers, invoices and other records, his store of beverages in and upon any premises where the same are manufactured, bottled, stored, sold, offered for sale, or held for sale, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(o) The Commissioner of Revenue is hereby charged with the enforcement of the provisions of this section and hereby authorized and empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this section, and the collection of taxes, penalties, and interest imposed by this article.

In the event that the Commissioner of Revenue shall find as facts that due to war conditions or other unusual circumstances, a free supply of tax-paid crowns cannot be obtained, and that the beverage tax revenues of the State are being, or will likely be, impaired by the difficulty or impossibility in obtaining said tax-paid crowns, the Commissioner shall be empowered to promulgate a regulation authorizing the use of stamps, labels, or other suitable devices in lieu of or in addition to crowns as evidences of tax payments for the duration of the emergency, but no longer. In the event that stamps, labels, or other devices are authorized by the Commissioner as herein provided, the remaining provisions of this article



shall not be affected, and shall be construed by substituting the name of the substituted device for "crown or lid" or "crowns or lids" wherever these words appear, unless the context clearly will not permit such construction.

The action of the Commissioner of Revenue in promulgating a regulation under date of September second, one thousand nine hundred and forty-two, authorizing the use of stamps as an alternative to crowns or lids, is in all respects hereby approved, ratified and confirmed.

(p) The Commissioner of Revenue is hereby authorized to prescribe, adopt, promulgate, and enforce the rules and regulations relating to the transportation of beverages enumerated in § 18-64 through this State, and from points outside of this State to points within this State, and to prescribe, adopt, promulgate and enforce rules and regulations reciprocal to those of, or laws of, any other state or territory affecting the transportation of beverages manufactured in this State.

(q) The Commissioner of Revenue shall have authority at any time after March 24, 1939, to make provisions for the furnishing of crowns or lids required by this section.

(r) In addition to the license taxes herein levied, a tax is hereby levied upon the sale of beverages described in § 18-64, subdivision (2) of sixty cents (60 cts.) per gallon. The foregoing tax to apply to naturally fermented wines. The tax on imitation, sub-standard or synthetic wines (as defined in the United States Treasury Regulations) shall be two dollars and forty cents (\$2.40) per gallon.

Unless the Commissioner of Revenue shall by regulation prescribe a method other than the use of tax stamps, the payment of the tax levied in this subsection shall be evidenced by the affixing to the bottles or containers wherein such beverages are offered for sale North Carolina wine tax paid stamps, which shall be of such design and of such denomination as shall be prescribed by the Commissioner of Revenue; provided, however, that no stamp evidencing the payment of unfortified wine tax shall be of a smaller denomination than six cents (6c). The Commissioner of Revenue shall make arrangements with some manufacturer to manufacture and release wine tax-paid stamps provided for in this section, and said stamps shall be sold at a discount of two per cent (2%) as sole compensation for North Carolina wine tax-paid stamp losses sustained in the process of production of wines, and no compensation or refund shall be made for tax-paid wines given as free goods or advertising or for losses sustained by spoilage and breakage incident to the sale and distribution of wines. The provisions of subsections (c) through (n), inclusive, of this section shall be applicable with respect to the requirement of affixing wine tax-paid stamps to bottles or containers wherein wine is sold, and the words "tax-paid crowns and lids" or similar words used in such subsections shall be taken to include wine tax-paid stamps. The Commissioner of Revenue shall have authority to promulgate rules and regulations relative to the time and manner of affixing wine tax-paid stamps and such other rules and regulations as may be deemed expedient and proper to carry out and enforce the provisions of this section, and he may require bottlers, jobbers, wholesalers and retailers to render such reports in such form and at such times as in his discretion may be deemed necessary in the proper administration of this section. Any person, firm or corporation violating any of the provisions of this section or any of the rules and regulations issued hereunder shall be guilty of a misdemeanor and shall be punished by fine or imprisonment or by both fine and imprisonment, in the discretion of the court.

The Commissioner of Revenue is hereby authorized and empowered to provide by regulation for the collection of the taxes levied in this subsection by a method other than the use of tax stamps when it appears to the Commissioner that said tax may be more conveniently and efficiently collected in some way other than by the use of tax stamps as provided herein.

(s) If any dealer, either at wholesale or retail shall expose for sale or have in his possession either in storage or on display any nontax-paid beverages enumer-



ated under § 18-64 (1) and (2), the Commissioner of Revenue shall have the authority to revoke any privilege license issued under this article to said dealer and said license shall not be renewed for the balance of the tax year; in addition, the Commissioner may refuse to issue new license to such dealer unless the dealer can satisfactorily show to the Commissioner of Revenue that he will in the future comply with the provisions of this article and the rules and regulations of the Commissioner issued under authority hereof.

(t) From the taxes collected annually under subsection (a) an amount equivalent to forty-seven and one-half per cent (47½%) thereof, and from the taxes collected annually under subsection (r) an amount equivalent to one-half thereof shall be allocated and distributed, upon the basis herein provided, to counties and municipalities wherein such beverages may be licensed to be sold at retail under the provisions of this article. The amounts distributable to each county and municipality entitled to the same under the provisions of this subsection shall be determined upon the basis of population therein as shown by the latest federal decennial census. Where such beverages may be licensed to be sold at retail in both the county and municipality, allocation of such amounts shall be made to both the county and the municipality on the basis of population. Where such beverages may be licensed to be sold at retail in a municipality in a county wherein the sale of such beverages is otherwise prohibited, allocation of such amounts shall be made to the municipality on the basis of population; provided, however, that where the sale of such beverages is prohibited within defined areas within a county or municipality, the amounts otherwise distributable to such county or municipality on the basis of population shall be reduced in the same ratio that such areas bear to the total area of the county or municipality, and the amount of such reduction shall be retained by the State: Provided, further, that if said area within a county is a municipality for which the population is shown by the latest federal decennial census, reduction of such amounts shall be based on such population rather than on area. The Commissioner of Revenue shall determine the amounts distributable to each county and municipality, for the period July 1st, 1947, to September 30th, 1947, inclusive, and shall distribute such amounts within sixty (60) days thereafter; and the Commissioner of Revenue annually thereafter shall determine the amounts distributable to each county and municipality for each twelve-month period ending September 30th and shall distribute such amounts within sixty (60) days thereafter.

The taxes levied in this section are in addition to the taxes levied in Schedule E of the Revenue Act. (1939, c. 158, s. 517; c. 370, s. 1; 1941, c. 50, s. 7; c. 339, s. 4; 1943, c. 400, s. 6; cc. 564, 565; 1945, c. 708, s. 6; 1947, c. 1084, ss. 7-9; 1951, c. 1162, s. 1; 1955, c. 1313, s. 6; c. 1370; 1957, c. 1340, s. 11; 1963, c. 460, s. 3; c. 992, s. 2.)

**Editor's Note.**—The first 1963 amendment inserted the words "at retail" immediately after the word "sold" in the first, third and fourth sentences of subsection (t).

The second 1963 amendment inserted "tax-paid" near the beginning of subsection (k) and added at the end the provision as to beverages for use or consumption on ocean-going vessels.

**§ 18-81.1. Use of funds allocated to counties and municipalities.**—The funds allocated to counties and/or municipalities under subsection (t) of § 18-81 may be used by said counties or municipalities as any other general or surplus funds of said unit may be used. (1947, c. 1084, s. 11.)

**§ 18-82. By whom tax payable.**—The tax levied in § 18-81 upon the sale of beverages enumerated in § 18-64, subdivision (1) shall be paid to the Commissioner of Revenue by the manufacturer or bottler of such beverages, and the tax levied in § 18-81 upon the sale of the beverages enumerated in § 18-64, subdivision (2) shall be paid to the Commissioner of Revenue by the wholesale distributor or bottler of such beverages. As a condition precedent to the granting of

license by the Commissioner of Revenue to any wholesale distributor, manufacturer or bottler of beverages under this article, the Commissioner of Revenue shall require each such wholesale distributor, manufacturer, or bottler to furnish bond in an indemnity company licensed to do business under the insurance laws of this State in such sums as the Commissioner of Revenue shall find adequate to cover the tax liability of each such wholesale distributor, manufacturer or bottler, proportioned to the volume of business of each such wholesale distributor, manufacturer or bottler, but in no event to be less than one thousand dollars (\$1,000.00), or to deposit federal, State, county or municipal bonds in required amounts, such county and municipal bonds to be approved by the Commissioner of Revenue. The Commissioner of Revenue may grant such extension of time for compliance with this condition as may be found to be reasonable. (1939, c. 158, s. 518; 1941, c. 339, s. 4.)

**§ 18-83. Nonresident manufacturers and wholesale dealers to be licensed.**—From and after April thirtieth, one thousand nine hundred thirty-nine, every nonresident desiring to engage in the business of making sales of the beverages described in § 18-64, to wholesale dealers licensed under the provisions of this article, shall first apply to the Commissioner of Revenue for a permit so to do. The Commissioner of Revenue may require of every such applicant that a bond in a sum not to exceed two thousand dollars (\$2,000.00) be executed by such applicant and deposited with the Commissioner, conditioned upon the faithful compliance by such applicant with the provisions of this article, and particularly that such applicant shall not make sales of any of the beverages described in § 18-64 to any person in this State except a duly licensed wholesale dealer. Upon the payment of a license tax of one hundred fifty dollars (\$150.00), if the Commissioner is satisfied that said applicant is a bona fide manufacturer or distributor of the beverages defined in § 18-64, he shall then issue a permit to such applicant which shall bear a serial number. The license issued under this section to any person who does not have a permit from the Board of Alcoholic Control as provided in this chapter for the sale for resale of beverages described in § 18-64 (2) shall only permit said licensee to engage in the business of selling for resale the beverages described in § 18-64 (1). Every holder of such nonresident permit and license shall thereafter put the number of such permit on every invoice for any quantity of beverages sold by such licensee to any wholesale dealer in North Carolina. Upon the failure of any such licensee to comply with all the provisions of this article, the Commissioner of Revenue may revoke such permit or license.

Any resident manufacturer licensed under § 18-67 shall not be required to post the bond required by this section. (1939, c. 158, s. 518½; 1945, c. 903, s. 9.)

**§ 18-83.1. Resident wholesalers shall not purchase beverages for resale from unlicensed nonresidents.**—It shall be unlawful for any resident wholesale distributor or bottler to purchase any of the beverages described in § 18-64 for resale within this State from any nonresident who has not procured the permit or license required in the preceding section [§ 18-83]. (1945, c. 708, s. 6.)

**§ 18-83.2. Importers to be licensed.**—(a) Any person who shall engage in the business of receiving shipments of the beverages described in §§ 18-64, 18-96, and 18-99 of this article and reselling the same in the same form and in the original containers to retailers or to other wholesalers described in this article may procure from the Commissioner of Revenue an importer's license which will entitle such licensed importer to purchase the beverages described above directly from bottlers, manufacturers and wholesalers located in foreign countries or possessions or territories of the United States, hereinafter called "foreign wholesaler." No licensee under this section shall import any of the beverages described herein without first obtaining and keeping in force an appropriate permit from the State Board of Alcoholic Control. The annual importer's license as provided



for under this section shall be one hundred fifty dollars (\$150.00) and shall expire on the next succeeding thirtieth day of April. The license issued under this section shall be revocable at any time by the Commissioner of Revenue for failure to comply with any of the conditions of this article or any rules or regulations issued by the Commissioner with respect to the character of the records required to be kept, reports to be made, or payment of tax provided for under this article.

It is the intent of this section to limit the purchase by licensed importers of beverages described in §§ 18-64, 18-96, and 18-99 to sales and shipments made by such foreign wholesalers from their location outside the continental United States directly to the licensed importer in this State.

The Commissioner of Revenue shall require each such importer to furnish bond in an indemnity company licensed to do business under the insurance laws of this State in such sums as the Commissioner of Revenue shall find adequate to cover the tax liability of each such importer proportioned to the volume of business of each such importer, but in no event to be less than two thousand dollars (\$2,000.00).

(b) (1) Proper North Carolina tax-paid crowns or lids as provided under § 18-81 of this article must be affixed to all original containers of beverages described in § 18-64 (1) before such beverages shipped from such foreign wholesalers are received, sold, handled, offered for sale or held for sale within this State.

(2) Proper North Carolina tax-paid wine stamps as provided under §§ 18-81 and 18-85.1 of this article must be affixed to all original bottles or containers of beverages described in §§ 18-64 (2), 18-96, and 18-99 before such beverages shipped from such foreign wholesalers are received, sold, handled, offered for sale or held for sale within this State.

(c) The purchase of North Carolina tax-paid crowns, lids and stamps as referred to in this section may be made by the licensed importer, but the shipment of such tax-paid crowns, lids or stamps released for the account of the licensed importer shall only be made directly to the foreign wholesaler. Any unused North Carolina tax-paid crowns, lids or stamps which are returned for a tax refund for the account of the licensed importer must be returned directly to the crown, lid or stamp manufacturer from whom received, subject to any rules or regulations issued by the Commissioner of Revenue and other relevant provisions of law. (1957, c. 1244.)

**§ 18-84. Payment of tax by retailers.**—The granting of license by any municipality or county under this article to any person to sell at retail the beverages enumerated under § 18-64 shall not be valid license for such sale at retail until such person shall have filed with the Commissioner of Revenue a bond in a surety company licensed by the Insurance Department to do business in this State in such sum as the Commissioner of Revenue may find to be sufficient to cover the tax liability of every such person, but in no event to be less than one thousand dollars (\$1,000.00). The Commissioner of Revenue may waive the requirement of this section for indemnity bond with respect to any such person who may file a satisfactory contract or agreement with the Commissioner of Revenue that such person will purchase and sell beverages enumerated in § 18-64 only from wholesale distributors or bottlers licensed by the Commissioner of Revenue under this article who pay the tax under § 18-81 upon all such beverages sold to retail dealers in this State. The violation of the terms of any such contract or agreement between any such retail dealer and the Commissioner of Revenue by the purchase or sale of any of the beverages enumerated in § 18-64 from anyone other than a licensed wholesale distributor or bottler under this article shall automatically cancel the license of any such retail dealer and shall be prima facie evidence of intent to defraud, and any person guilty of violation of any such contract or agreement shall be guilty of a misdemeanor. (1939, c. 158, s. 519.)



**§ 18-85. Tax on spirituous liquors; sale of fortified wines in A.B. C. stores.**—(a) In lieu of taxes levied in Schedule E of the Revenue Act on the sale of spirituous liquors, there is hereby levied a tax of ten per cent (10%) on the retail price of spirituous distilled liquors of every kind that is sold in this State, including liquors sold in county or municipal liquor stores. Provided, however, that in no event shall the amount paid under this section by county or municipal liquor stores exceed one-half of the net profits from liquors sold through such stores in any county or municipality. The taxes levied in this section shall be payable monthly, at the same time and in the same manner as taxes levied in Schedule E of the Revenue Act, and the liability for such tax shall be subject to all the rules, regulations and penalties provided in Schedule E and in other sections of the Revenue Act for the payment or collection of taxes.

(b) In addition to the tax provided for in subsection (a) of this section, there is hereby levied an additional tax or surtax of two per cent (2%) on the retail price of spirituous distilled liquors of every kind that is sold in this State, including liquors sold in county or municipal liquor stores. The proviso contained in subsection (a) of this section shall not apply to the taxes levied under this subsection.

(c) Spirituous liquors as referred to in this section shall be deemed to include any alcoholic beverages containing an alcoholic content of more than twenty-four per cent (24%) by volume.

(d) Fortified wines may be sold in county or municipal alcoholic beverage control stores duly established under the authority of article 3 of this chapter or of any other applicable law. (1939, c. 158, s. 519½; 1941, c. 339, s. 4; 1951, c. 1162, s. 2; 1955, c. 1313, s. 6; 1961, c. 826, s. 1.)

**§ 18-85.1. Tax on fortified wines.**—In addition to other taxes levied in this article, there is hereby levied a tax upon the sale of fortified wines as defined in §§ 18-96 and 18-99 of seventy cents (70¢) per gallon. Unless the Commissioner of Revenue shall by regulation prescribe a method other than the use of tax stamps, the payment of such tax is to be evidenced by the affixing to the bottles or containers wherein such wine is sold of North Carolina wine tax-paid stamps, which stamps shall be of such design and shall be issued in such denominations as may be prescribed by the Commissioner of Revenue; provided, however, that no stamp shall be issued of a lesser denomination than four cents (4c). All of the provisions of subsection (r) of § 18-81 relative to the tax on unfortified wines shall be applicable to the tax levied in this section. Any person, firm or corporation violating any of the provisions of this section or any of the rules and regulations promulgated by the Commissioner of Revenue relative to the administration of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine or imprisonment or by both fine and imprisonment, in the discretion of the court.

The Commissioner of Revenue is hereby authorized and empowered to provide by regulation for the collection of the taxes levied in this section by a method other than the use of tax stamps when it appears to the Commissioner that said tax may be more conveniently and efficiently collected in some way other than by the use of tax stamps as provided herein. (1951, c. 1162, s. 3; 1955, c. 1313, s. 6.)

**§ 18-86. Books, records, reports.**—Every person licensed under any of the provisions of this article shall keep accurate records of purchase and sale of all beverages taxable under this article, such records to be kept separate from all purchases and sales of merchandise taxable under this article, including a separate file and record of all invoices. The Commissioner of Revenue or any authorized agent, shall at any time during business hours, have access to such records. The Commissioner of Revenue may also require regular or special reports to be made by every such person, at such times and in such form as the Commissioner may require. (1939, c. 158, s. 520.)

§ 18-87. **No license for sales upon school property.**—No license shall be issued for the sale of beverages enumerated in § 18-64 upon the campus or property of any public or private school or college in this State. (1939, c. 158, s. 521.)

§ 18-88. **License shall be posted.**—Each form of license required by this article shall be kept posted in a conspicuous place at each place where the business taxable under this article is carried on, and a separate license shall be required for each place of business. (1939, c. 158, s. 522.)

§ 18-88.1. **Wine for sacramental purposes exempt from tax.**—The tax levied in this article upon the sale of beverages described in § 18-54 (2) shall not apply to sacramental wines received by ordained ministers of the gospel under the provisions of § 18-21. (1945, c. 708, s. 6.)

§ 18-88.2. **Exemption of beer, etc., sold to ocean-going vessels.** — The taxes levied in this article upon the sale of beverages described in G.S. 18-64 (1) shall not apply or be chargeable against any manufacturer, bottler, wholesaler, or distributor on any of such beverages sold and delivered for use or consumption by or on ocean-going vessels which ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for use of such vessel; provided, however, that sales of beverages described in § 18-64 (1) made to officers, agents, members of the crew or passengers of such vessels for their personal use shall not be exempted from payment of such taxes. Subject to such rules and regulations as may be promulgated by the Commissioner of Revenue, such beverages may be sold and delivered to such ocean-going vessels without having affixed thereto tax-paid lids or crowns. (1963, c. 992, s. 1.)

§ 18-89. **Administrative provisions.** — The Commissioner of Revenue and the authorized agents of the State Department of Revenue shall have and exercise all the rights, duties, powers, and responsibilities in enforcing this article that are enumerated in the Revenue Act in administering taxes levied in Schedule B of that act. Any person, firm or corporation engaging in any activity for which a State, county, or municipal license is required under this article without obtaining said license, or continuing any such activity after the expiration of any State, county, or municipal license, granted under this article, shall be subject to the same liability for criminal prosecution, and for penalties, as is prescribed in § 105-109. (1939, c. 158, s. 523; 1945, c. 708, s. 6.)

§ 18-89.1. **Rules and regulations.**—The Commissioner of Revenue shall, from time to time, initiate and prepare such regulations, not inconsistent with the provisions of G.S. 18-78 or other provisions of law, as may be useful and necessary to implement the provisions of this article, such regulations to become effective when approved by the Tax Review Board. All regulations and amendments thereto shall be published and made available by the Commissioner of Revenue.

The Commissioner of Revenue may, from time to time, make and prescribe such administrative rules, not inconsistent with law and the regulations approved by the Tax Review Board, as may be useful for the administration of his department and the discharge of his responsibilities.

References to rules and regulations of the Commissioner of Revenue in this chapter and in any subsequent amendments or additions thereto (unless expressly provided to the contrary therein) shall be construed to mean those rules and regulations promulgated under the provisions of this section. (1955, c. 1350, s. 3.)

§ 18-90. **Appropriation for administration.**—For the efficient administration of this article an appropriation is hereby made for the use of the Depart-

ment of Revenue in addition to the appropriation in the appropriation bill of a sum equal to three per cent (3%) of the total revenue collections under this article to be expended under allotments made by the Budget Bureau of such part of the whole of such appropriation as may be found necessary for the administration of this article. The Budget Bureau may estimate the yield of revenue under this article and make advance apportionment based upon such estimate. (1939, c. 158, s. 524.)

**§ 18-90.1. Sale to or purchase by minor under eighteen.**—It shall be unlawful for:

- (1) Any person, firm or corporation to sell or give any of the products described in G.S. 18-64 and G.S. 18-60 to any minor under eighteen (18) years of age.
- (2) Any minor under eighteen (18) years of age to purchase, or for anyone to aid or abet such minor in purchasing, any of the products described in G.S. 18-64 or in G.S. 18-60. (1933, c. 216, s. 8; 1959, c. 745, s. 1.)

**Cross Reference.**—As to sale of liquor to minors under the Alcoholic Beverage Control Act, see § 18-46. **Evidence of Age of Person to Whom Licensee Sold Beer.**—See note to § 18-78.

**§ 18-90.2. Revocation of license upon revocation of permit.**—Whenever the State Board of Alcoholic Control shall certify to the Commissioner of Revenue that any permit issued by said Board under the provisions of this chapter has been cancelled or revoked, the Commissioner of Revenue shall thereupon immediately revoke any license which has been issued under this article to the person whose permit has been revoked by said Board, and such revocation by the Commissioner shall not entitle the person whose license was revoked to any refund of taxes or license fees paid for or under said license. (1945, c. 903, s. 12.)

**§ 18-91. Violation made misdemeanor; revocation of permits; forfeiture of license.**—Whosoever violates any of the provisions of this article, or any of the rules and regulations promulgated pursuant thereto, shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine or by imprisonment, or by both fine and imprisonment, in the discretion of the court. If any licensee is convicted of the violation of the provisions of this article, or any of the rules and regulations promulgated pursuant thereto, the court shall immediately declare his permit revoked, and notify the county commissioners accordingly, and no permit shall thereafter be granted to him within a period of three years thereafter. Any licensee who shall sell or permit the sale on his premises or in connection with his business, or otherwise, of any alcoholic beverages not authorized under the terms of this article, unless otherwise permitted by law, shall, upon conviction thereof, forfeit his license in addition to any punishment imposed by law for such offense. (1939, c. 158, s. 525.)

**§ 18-91.1. Persons, firms, or corporations engaged in more than one business to pay on each.**—When any person, firm or corporation is engaged in more than one business or trade which is made under the provisions of this article subject to State license taxes, such person, firm, or corporation shall pay the license taxes prescribed in this article for each separate business or trade. (1945, c. 708, s. 6.)

**§ 18-92. Effective date.**—All taxes levied in this article shall be in effect from and after April thirtieth, one thousand nine hundred thirty-nine. (1939, c. 158, s. 528.)

**§ 18-93. Adoption of federal regulations.**—The “Standards of Identity for Wine” and the regulations relating to “Labeling and Advertising of Wine” promulgated by the federal alcohol administration of the United States Treasury



Department, and known respectively as Regulation Number Four, Article II, and Regulation Number Four, Articles III and VI, are hereby adopted by North Carolina. (1937, c. 335, s. 2.)

#### ARTICLE 5.

#### *Fortified Wine Control Act of 1941.*

§ 18-94. **Title of article.**—The title of this article shall be the “Fortified Wine Control Act of one thousand nine hundred and forty-one.” (1941, c. 339, s. A.)

**Cross Reference.**—For subsequent law exempting from its application wines defined in this article, see § 18-49.4.

§ 18-95. **Purpose of article.**—The purpose of this article is to prevent and prohibit sales of fortified wines at any places in the State except through county operated alcoholic beverage control stores and to regulate such sales. (1941, c. 339, s. B.)

**Cross Reference.**—As to alcoholic beverage control stores, see §§ 18-36 through 18-62. **Stated in** *State v. Tola*, 222 N.C. 406, 23 S.E.2d 321 (1942).

§ 18-96. **Definition of “fortified wines.”**—Fortified wines shall mean any wine or alcoholic beverage made by fermentation of grapes, fruit and berries and fortified by the addition of brandy or alcohol or having an alcoholic content of more than fourteen per cent of absolute alcohol, reckoned by volume, and which has been approved as to identity, quality and purity by the State Board of Alcoholic Control as provided in this chapter. (1941, c. 339, s. 1; 1945, c. 903, s. 10.)

**Quoted in** *State v. Tola*, 222 N.C. 406, 23 S.E.2d 321 (1942).

§ 18-97. **Certain sales, etc., prohibited; names of persons ordering wines furnished police or sheriff.**—It shall be unlawful for any person, firm or corporation, except alcoholic beverage control stores operated in North Carolina, to sell, or possess for sale, any fortified wines as defined herein. It shall be unlawful for any person to purchase on order and receive by mail or express from any such alcoholic beverage control store fortified wines in quantities in excess of one gallon at any one time. Upon the request of any chief of police or sheriff any alcoholic beverage control system shall furnish the names of any persons ordering such wines, and the dates and amounts of such orders. Nothing herein contained shall be construed to permit any person to order and receive by mail or express any spirituous liquors. (1941, c. 339, s. 2; 1945, c. 635; c. 708, s. 6.)

§ 18-98. **Violation made misdemeanor.**—The violation of § 18-97 by any person, firm or corporation shall constitute a misdemeanor punishable as provided in § 18-91. (1941, c. 339, s. 5.)

§ 18-99. **Application of other laws; sale of sweet wines; licensing of wholesale distributors.**—The provisions of article 3 of this chapter shall apply to fortified wines: Provided, in any county in which the operation of alcoholic beverage control stores is authorized by law, it shall be legal to sell sweet wines for consumption on the premises in hotels and restaurants which have a Grade A rating from the State Board of Health, and it shall be legal to sell said wines in drug stores and grocery stores for off premises consumption; such sales however shall be subject to the rules and regulations of the State Alcoholic Beverage Control Board. For the purpose of this section, sweet wines shall be any

wine made by fermentation from grapes, fruits or berries, to which nothing but pure brandy has been added, which brandy is made from the same type of grape, fruit or berry, which is contained in the base wine to which it is added, and having an alcoholic content of not less than fourteen per centum (14%) and not more than twenty per centum (20%) of absolute alcohol, reckoned by volume, and approved by the State Board of Alcoholic Control as to identity, quality and purity as provided in this chapter: Provided, that nothing in this article or chapter shall prevent wholesale distributors from possessing, transporting, warehousing, or selling, as a wholesaler, in any county of the State, and the State Alcoholic Control Board shall approve and authorize the licensing of wholesale distributors, in any county, who qualify under the provisions of chapter 18; provided, that such sales are to persons, firms or corporations that have complied with the licensing provisions of chapter 18. (1941, c. 339, s. 6; 1945, c. 903, s. 11; 1963, c. 460, s. 2.)

**Local Modification.** — Guilford: 1959, c. 1072; Mitchell: Pub. Loc. 1937, c. 394; 1941, c. 339, s. 6; Yancey: Pub. Loc. 1937, c. 579; 1941, c. 339, s. 6. wrote the second proviso and added the third proviso.  
**Stated in State v. Tola**, 222 N.C. 406, 23 S.E.2d 321 (1942).

**Editor's Note.**—The 1963 amendment re-

## ARTICLE 6.

### *Light Domestic Wines; Manufacture and Regulation.*

**§ 18-100. Manufacture of domestic wines permitted.** — It shall be lawful for any person growing crops, either wild or cultivated, of grapes, fruits or berries to make therefrom light domestic wines or wines having only such alcoholic content as natural fermentation may produce, for the use of his family and guests. (1935, c. 393, s. 1.)

**Cross Reference.**—For subsequent law exempting from its application light wines authorized by this article, see § 18-49.4.

**§ 18-101. Manufacture by any person, firm or corporation authorized to do business in State.**—Any person, firm or corporation authorized to do business in the State may, subject to the requirements of the Beverage Control Act, under regulations prescribed by the Commissioner of Agriculture and approved by the Governor, engage in the business of manufacturing and producing wines and ciders by natural fermentation from the juices of fruits, grapes and berries grown within the State, and such wines and ciders shall be classified and recognized as food and distributed as such. (1935, c. 393, s. 3; c. 466, s. 1.)

**§ 18-102. Rules and regulations of Commissioner of Agriculture.**—The Commissioner of Agriculture shall promulgate and publish such reasonable rules and regulations, with the approval of the Governor, for the regulation of such wineries as may be established, and such rules and regulations shall have the force and effect of laws, after the same have been approved by the Governor. (1935, c. 393, s. 4.)

**§ 18-103. Information furnished farmers.**—It shall be the duty of the Department of Agriculture to disseminate to the farmers of the State in an economical way the best information it can get of the best methods of cultivation of such crops, and the making of such light domestic wines. (1935, c. 393, s. 7.)

**Cross Reference.**—As to duties of Board and Commissioner of Agriculture with reference to new agricultural industries, especially grapes, etc., see § 106-22, subdivision (6).

**§ 18-104. Fruit ciders included.**—All the provisions of this article shall also apply to the manufacture of fruit ciders. (1935, c. 393, s. 7½.)

## ARTICLE 7.

*Beer and Wine; Hours of Sale.*

§ 18-105. **Sale between certain hours unlawful.**—It shall be unlawful for any person, firm, or corporation, licensed to sell beer and/or wine in North Carolina to sell, or offer for sale, any beer and/or wine in North Carolina between the hours of 11:45 o'clock P. M. and 7:30 o'clock A. M. every day. (1943, c. 339, s. 1; 1963, c. 426, s. 7.)

**Editor's Note.**—For comment on this and the following sections prior to the 1963 amendment, see 21 N.C.L. Rev. 356 and 27 N.C.L. Rev. 463.

Prior to the 1963 amendment this sec-

tion prohibited sales between eleven-thirty P. M. and seven A. M.

**Cited in** Davis v. Charlotte, 242 N.C. 670, 89 S.E.2d 406 (1955).

§ 18-106. **Permitting consumption on premises during certain hours unlawful.**—It shall be unlawful for any person, firm, or corporation, licensed to sell beer and/or wine in North Carolina, to permit or allow the consumption of any beer and/or wine at any time and in any place in North Carolina under the control of, or being operated by, said licensee, between the hours of 12:00 o'clock midnight and 7:30 o'clock A. M. (1943, c. 339, s. 2; 1953, c. 675, s. 4; 1963, c. 426, s. 8.)

**Editor's Note.**—Prior to the 1963 amendment this section, as amended in 1953, applied to consumption of beer or wine between midnight and seven A.M. See 27

N.C.L. Rev. 463 for comment on law prior to the 1963 amendment.

**Cited in** Davis v. Charlotte, 249 N.C. 670, 89 S.E.2d 406 (1955).

§ 18-107. **Regulation by counties and municipalities.**—In addition to the restrictions on the sale of beer and/or wine set out in G.S. 18-105, the governing bodies of all municipalities and counties in North Carolina shall have, and they are hereby vested with, full power and authority to regulate and prohibit the sale of beer and/or wine from 11:45 o'clock P. M. on each Saturday until 7:30 o'clock on the following Monday.

The power herein vested in governing bodies of municipalities shall be exclusive within the corporate limits of their respective municipalities, and the powers herein vested in the county commissioners of the various counties in North Carolina shall be exclusive in all portions of their respective counties not embraced in the corporate limits of municipalities therein. (1943, c. 339, s. 3; 1963, c. 426, s. 9.)

**Local Modification.**—Town of Hamlet in Richmond County: 1945, c. 931; town of Rockingham in Richmond County: 1945, c. 930.

**Editor's Note.** — The 1963 amendment rewrote the first paragraph of this section.

**Stated in** Davis v. Charlotte, 242 N.C. 670, 89 S.E.2d 406 (1955).

§ 18-108. **Violation a misdemeanor; revocation of license.**—Any person, firm, or corporation, licensed to sell beer and/or wine, violating the provisions of this article or any person, firm, or corporation, licensed to sell beer and/or wine, violating any regulations which may be made under this article by the county commissioners of the county in which said person, firm, or corporation is licensed to sell beer and/or wine, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty dollars (\$50.00) and/or imprisoned not less than thirty days, and his or its license to sell beer and/or wine shall automatically be revoked, by the court, or as otherwise provided by law. (1943, c. 339, s. 4.)

§ 18-108.1. **"Beer" defined.**—Wherever used in this article, the word "beer" is defined to include beer, lager beer, ale, porter, and other brewed or fermented beverages containing one-half ( $\frac{1}{2}$ ) of one per cent (1%) of alcohol by volume but not more than five per cent (5%) of alcohol by weight as authorized by the laws of the United States of America. (1945, c. 780.)



## ARTICLE 8.

*Establishment of Standards for Lawful Wine; Permits, etc.*

§ 18-109. **Powers of State Board of Alcoholic Control.** — The State Board of Alcoholic Control shall be referred to herein as “the Board.” The Board is authorized and empowered:

- (1) To adopt rules and regulations establishing standards of identity, quality and purity for the wines described in § 18-64 (2) and in article five of this chapter. These standards shall be such as are deemed by said Board to best protect the public against wine containing deleterious, harmful or impure substances or elements, or an improper balance of elements, and against spurious or imitation wines and wines unfit for beverage purposes. Provided, nothing in this or in any other section of this article or act shall authorize said Board to increase the alcoholic content of the wines described in § 18-64 (2) and in article five of this chapter.
- (2) To issue permits to resident or nonresident manufacturers, wineries, bottlers, and wholesalers, or any other persons selling wine for the purpose of resale, or offering wine for sale for the purpose of resale, whether on their own account or for or on behalf of other persons, which permit shall only authorize the possession or sale in this State of wines meeting the standards adopted by the Board; and to revoke any such permit on violation of any of the provisions of this article or of any of the rules and regulations promulgated under the authority of this article.
- (3) To test wines possessed or offered for sale, or sold in this State and to make chemical or laboratory analyses of said wines or to determine in any other manner whether said wines meet the standards established by said Board; to confiscate and destroy any wines not meeting said standards; to enter and inspect any premises upon which said wines are possessed or offered for sale; and to examine any and all books, records, accounts, invoices, or other papers or data which in any way relate to the possession or sale of said wines.
- (4) To take all proper steps for the prosecution of persons violating the provisions of this article, and for carrying out the provisions and intent thereof.
- (5) To employ a Director of the Wine Division and such other personnel as may be necessary for the efficient administration and enforcement of this article, subject to the provisions of the Executive Budget Act. The Director of the Wine Division and his assistants shall have full authority to make investigations, hold hearings and make findings of fact. Upon the approval by the Board of the findings and order of suspension or revocation of the permit of any licensee, such findings of the Director of the Wine Division or his assistants shall be deemed to be the findings and the order of the Board.
- (6) To exercise all other powers which may be reasonably implied from the granting of express powers herein, together with such other powers as may be incidental to, or convenient for, the carrying out and performance of the powers and duties herein given to said Board; and to exercise any and all of the powers granted said Board under § 18-39 which are needed for the proper administration and enforcement of this article.
- (7) The advertisement and sale of wine in this State shall be subject to all existing laws and the following additional authority and powers hereby expressly granted to the Board:

- a. The Board, in its discretion, may approve or disapprove all forms of advertising of wine, including the type and amount of display material which may be used in the place of business of a retail permit holder ;
- b. The Board shall have the sole power, in its discretion, to determine the fitness and qualification of an applicant for a permit to sell wine at retail. The Board shall inquire into the character of the applicant, the location, general appearance and type of place of business of the applicant ;
- c. The Board shall have authority, in its discretion, to determine the number of retail permits to be granted in any locality. In addition to the powers herein granted to the State Board of Alcoholic Control, said Board is authorized and empowered to adopt rules and regulations regulating and fixing the hours of sale in the several counties and municipalities therein in which wine is authorized to be sold. The Board shall not issue a permit hereunder for the sale of wine in any poolroom or billiard parlor or in any other place of business, of whatsoever kind and character, if in the discretion of the Board, it is not a proper place for the sale of wine ;
- d. The Board shall require that all retail permit holders keep their places of business clean, well lighted and in an orderly manner ;
- e. Every person intending to apply for any permit to sell wine at retail hereunder shall, not more than thirty (30) days and not less than ten (10) days before applying to the Board for such permit, make application to the county and municipal authority, as provided for in chapter 18, article 4, of the General Statutes of North Carolina, and shall post a notice of such intention on the front door of the building, place or room where he proposes to engage in such business, or publish such notice at least once in a newspaper published in or having a general circulation in the county, city or town wherein such person proposes to engage in such business ;
- f. Every person desiring a permit under the provisions of this subdivision shall, after publishing notice of his intention as provided in paragraph e above, file with the Board an application therefor on forms provided by the Board and a statement in writing and under oath setting forth such information as the Board shall require ;
- g. Any objections to the issuance of the permit to an applicant shall be filed in writing with the Board and the Board shall not refuse to grant any such permit except upon a hearing held after ten days' notice to the applicant of the time and place of such hearing, which notice shall contain a statement of the objections to granting such permit and shall be served on the applicant by sending same to the applicant by registered or certified mail to his last known post-office address, or by personal service by an agent of the Board. The applicant shall have the right to produce evidence in his behalf at the hearing and be represented in person or by counsel ;
- h. All persons holding a license to sell wine at retail at the time of the enactment of this law shall be deemed to have complied with all requirements of the Board in filing application for a permit to sell wine at retail, except operators of poolrooms and billiard parlors, but shall be subject to the action of the Board in suspension or revocation of licenses, as provided for herein.

All permits shall be for a period of one year unless sooner revoked or suspended and shall be renewable May first of each calendar year;

- i. The Board shall certify to the Department of Revenue the names and addresses of all persons to whom the Board has issued permits and no license issued to an applicant shall be valid until the applicant has obtained the permit, as provided by this subdivision;
  - j. The Board may suspend or revoke any permit issued by it if in the discretion of the Board it is of the opinion that the permittee is not a suitable person to hold such permit or that the place occupied by the permittee is not a suitable place, or that the numbers of permits issued should be reduced;
  - k. Before the Board may suspend or revoke any permit issued under the provisions of this subdivision, at least ten days' notice of such proposed or contemplated action by the Board shall be given to the affected permittee. Such notice shall be in writing, shall contain a statement in detail of the grounds or reasons for such proposed or contemplated action of the Board, and shall be served on the permittee by sending the same to such permittee by registered or certified mail to his last known post-office address, or by personal service by an agent of the Board. The Board shall in such notice appoint a time and place when and at which the said permittee shall be heard as to why the said permits shall not be suspended or revoked. The permittee shall at such time and place have the right to produce evidence in his behalf and to be represented by counsel;
  - l. The action of the Board in refusing to issue a permit or in suspending or revoking same pursuant to the provisions of this subdivision shall not be subject to review by any court nor shall any mandamus lie in such case;
  - m. In case where the Board suspends or revokes a permit, the Board shall grant the permittee a reasonable length of time in which to dispose of his stock.
- (8) All licenses shall be issued under the provisions of article 4 of chapter 18 of the General Statutes. The granting of a permit hereunder to sell wine shall be required in addition to the requirements of article 4 of chapter 18 of the General Statutes as to securing a license to sell wine at retail. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1957, c. 1048; 1963, c. 426, s. 10; c. 460, s. 1.)

**Editor's Note.**—Section 3 of the 1947 amendatory act provides that the act shall not repeal any special, public-local or private act prohibiting the sale of wine in any county in this State, or any act authorizing the board of commissioners of any county of this State, or the governing board of any municipality, in its discretion, to prohibit the sale of wine; and shall not repeal any act prohibiting the sale of wine by vote of the people of any county or municipality and any county or municipality in which wine is permitted to be sold hereafter under the provisions of article 11 of this chapter.

For discussion of the 1947 amendatory act, see 23 N.C.L. Rev. 350.

The first 1963 amendment inserted in paragraphs g and k of subdivision (7) the references to certified mail and to personal service by an agent of the Board.

The second 1963 amendment changed subdivision (1) by deleting from the end thereof the words "or to permit the sale or possession of any wines in any county of the State where the same are now or shall hereafter be prohibited by law."

**This section relieves licensing authorities, State and local, of responsibility with respect to the fitness of the applicant or place where wines may be sold.** *Staley v. Winston-Salem*, 258 N.C. 244, 128 S.E.2d 604 (1962).

**The State Board exercises sole discre-**



tionary powers in determining fitness of the applicant, the number of retail outlets permitted in any locality, and supervision over those who sell wines. *Staley v. Winston-Salem*, 258 N.C. 244, 128 S.E.2d 604 (1962).

**The Board may revoke or suspend permits for cause.** *Staley v. Winston-Salem*, 258 N.C. 244, 128 S.E.2d 604 (1962).

**Effect of City Zoning Ordinance.**—A restaurant owner's right to operate a restaurant being conceded, a city zoning ordinance could not set at naught a statewide statute permitting the sale of wines in such restaurants. *Staley v. Winston-Salem*, 258 N.C. 244, 128 S.E.2d 604 (1962).

**§ 18-110. Duties of persons possessing wine or offering the same for sale.**—All persons possessing or offering for sale or reselling any of the wines described in § 18-64 (2) and in article five of this chapter, shall keep clear, complete and accurate records which will reveal the sources from which said wines were acquired, the date of acquisition, and any other information which may be required to be preserved by rules and regulations of the Board. All such persons shall freely permit representatives of the Board to enter and inspect the premises upon which such wines are possessed or offered for sale, to test and analyze any of such wines, and to examine all books, records, accounts, invoices, or other papers or data relating to such wines. (1945, c. 903, s. 1.)

**§ 18-111. Statement of analysis to be furnished.**—Manufacturers, wineries, bottlers, and wholesalers, or any other persons selling wine for the purpose of resale, whether on their own account or for or on behalf of other persons, shall, upon the request of the Board, furnish a verified statement of a laboratory analysis of any wine sold or offered for sale by such persons. (1945, c. 903, s. 1.)

**§ 18-112. Manufacturers, bottlers, wholesalers, et cetera, to obtain permit for sale from Board.**—All manufacturers of wine, wineries, bottlers of wine, wholesalers of wine, or any other persons selling wine for the purpose of resale, whether on their account or for or on behalf of other persons, whether any of such manufacturers, wineries, bottlers, wholesalers or other persons are residents or nonresidents of this State, shall, as a condition precedent to the sale or the offering for sale of any wine described in § 18-64 (2) and in article five of this chapter, apply for and obtain from the State Board of Alcoholic Control a permit for the sale of wines approved by said Board. The sale of wines without such a permit, or the sale with such a permit of wines not approved by the Board, shall be unlawful. (1945, c. 903, s. 1.)

**§ 18-113. Violation misdemeanor; permit revoked.**—Any person who violates any of the provisions of this article, or any of the rules and regulations promulgated under the authority of this article, shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned, or both, in the discretion of the court. Any permit issued under authority hereof shall be subject to suspension or revocation by the Board when it appears that the permit holder has violated any of the provisions of this article. Provided, however, that when the Board shall determine that any person has violated any of the provisions hereof, before his permit shall be either suspended or revoked, he shall be given ten days' written notice by registered or certified mail or personal service by an agent of the Board, advising the permit holder of the charges against him and fixing a day, hour and place for a hearing, which hearing shall be conducted by the Board. The permit holder shall be entitled to appear in person or be represented by counsel at such hearing. (1945, c. 903, s. 1; 1963, c. 426, s. 11.)

**Editor's Note.** — The 1963 amendment formerly provided for five days' written made changes in the third sentence, which notice by registered mail.

**§ 18-113.1. Misdemeanor for retailer to sell unapproved wines.**—It shall be unlawful for any person selling at retail any of the wines described in

§ 18-64 (2) and in article five of this chapter, to sell wines, the brands of which are not on the approved list of wines prepared by the State Board of Alcoholic Control, unless specific authority for the sale of said wines has been obtained from said Board. It shall be the duty of all retailers to secure from the State Board of Alcoholic Control an approved list of wines and it shall be unlawful for retailers to purchase from manufacturers, wholesalers or distributors any wines not on said approved list, unless specific authority for such purchase is obtained from the State Board of Alcoholic Control.

It shall be unlawful for any person other than a manufacturer, distributor or bottler to buy, or to sell at retail to any one person, more than one gallon of wine at any one time, whether in one or more places.

Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned, or both, in the discretion of the court. (1945, c. 903, s. 1; 1949, c. 1251, s. 3.)

**Editor's Note.**—Section 4½ of the 1949 amendatory act provides that its provisions shall apply only to the counties and cities that have established or may establish alcoholic beverage control stores.

**§ 18-113.2. Types of wine included under provisions of article.**—The types of wine included under the provisions of this article shall include all types of wine as defined in § 18-64 (2) and article 5 of this chapter. (1949, c. 1251, s. 1.)

**Editor's Note.**—Section 4½ of the 1949 act from which this section was codified provides: "The provisions of this act shall apply only to the counties and cities that have or may establish alcoholic beverage control stores."

**§ 18-114. Funds for administration of article.** — The Governor and the Council of State are authorized to allocate from the contingency and emergency fund such funds for the administration of this article as may be found to be necessary. (1945, c. 903, s. 1.)

**§ 18-115. Definition of "person."**—As used in this article, the word "person" shall include natural persons, partnerships, associations, joint stock companies, corporations, and any other form of organization for the transaction of business. (1945, c. 903, s. 1.)

**§ 18-116. Effective date; disposition of wines on hand.**—This article shall be effective from and after March 19, 1945. Provided, no standards adopted by the State Board of Alcoholic Control shall be effective until thirty days after the adoption of the regulation establishing said standards; and provided further, that any person affected by the adoption of any standard by the Board shall be granted sixty days after the effective date of the standard within which to dispose of any wines on hand at the effective date of said standard which do not comply with said standard. (1945, c. 903, s. 1.)

**§ 18-116.1. Additional power of local governing body to suspend or revoke retail wine license.**—In addition to the other grounds provided by law for refusing to grant, or for revoking or suspending wine licenses, the governing body of any county or city may revoke or suspend the license of any retail licensee within its jurisdiction for violating any existing law or regulation of the Board concerning the sale of wine. In any proceeding before such governing body for the revocation or suspension of a retailer's license, the licensee shall be given due notice of the charges against him, and be given an opportunity to appear personally and by counsel in his defense. (1949, c. 1251, s. 4.)

**Editor's Note.**—Section 4½ of the 1949 act adding §§ 18-116.1 through 18-116.5 provides: "The provisions of this act shall apply only to the counties and cities that have or may establish alcoholic beverage control stores."

For comment on this and the four following sections, see 27 N.C.L. Rev. 463.

**§ 18-116.2. Authority of local A.B.C. boards to revoke or suspend permit or limit sales to A.B.C. stores.**—In addition to the authority of the State Board, the local A.B.C. boards may, within their respective counties, suspend or revoke any permit for the sale of wine if in the discretion of the local A.B.C. board it is of the opinion that the permittee is not a suitable person to hold such permit, or that the place occupied by the permittee is not a suitable place, or that the number of permits issued should be reduced; provided, further, that the local A.B.C. boards shall have and retain at all times the discretionary right to limit, within the territory over which they have jurisdiction, the sale of wine to A.B.C. stores exclusively, if in the opinion of a local A.B.C. board conditions warrant such restriction. (1949, c. 1251, s. 4.)

**Cross Reference.**—See note under § 18-116.1.

**§ 18-116.3. Effect of revocation of license or permit by local authority.**—In the event any county or municipality, through its governing body, shall for cause revoke any license, such revocation shall automatically revoke any other wine license or permit held by the licensee; and in all cases where a permit is revoked by the Board or a local A.B.C. board, such revocation shall render void any State, county, or municipal license issued hereunder. (1949, c. 1251, s. 4.)

**Cross Reference.**—See note under § 18-116.1.

**§ 18-116.4. Authority of local boards to restrict days and hours of sale of wine.**—In addition to the authority of the State Board to regulate and fix the days and hours of the sale of wine, the local A.B.C. boards shall have authority, in their discretion, to further restrict the days and hours of the sale of wine within their respective territories. (1949, c. 1251, s. 4.)

**Cross Reference.**—See note under § 18-116.1.

**§ 18-116.5. Investigation of licensed premises; examination of books, etc.; refusal to admit inspector; powers and authority of inspectors; use of A.B.C. officers as inspectors.**—All officers, inspectors and investigators appointed by either the State Board or local A.B.C. boards shall have authority to investigate the operation of the licensed premises of all persons licensed under this article, to examine the books and records of such licensee, to procure evidence with respect to the violation of this article, or any rules and regulations adopted thereunder, and to perform such other duties as the Board may direct. Such inspectors shall have the right to enter any such licensed premises in the State in the performance of their duty, at any hour of the day or night when wine is being sold or consumed on such licensed premises. Refusal by such permittee or by any employee of a permittee to permit such inspectors to enter the premises shall be cause for revocation or suspension of the permit of such permittee. The officers, inspectors and investigators so appointed shall, after taking the oath prescribed for peace officers, have the same powers and authority, including the right to serve all criminal process and to make arrests, as other peace officers.

All alcoholic beverage control officers now employed, or who may hereafter be employed, may be used by the Board, or the local A.B.C. boards, as inspectors in counties and cities having alcoholic beverage control stores, and shall be vested with all powers and authority as herein vested in inspectors. (1949, c. 1251, s. 4.)

**Cross Reference.**—See note under § 18-116.1.



## ARTICLE 9.

*Substandard, Imitation and Synthetic Wines.*

§ 18-117. **Possession or sale prohibited.**—It shall be unlawful for any retail wine licensee in the State of North Carolina to have in his possession, to sell, or offer for sale any imitation, substandard, or synthetic wine. (1945, c. 974, s. 1.)

§ 18-118. **Violation a misdemeanor.**—Violation of the provisions of this article shall constitute a misdemeanor and be punishable by a fine or imprisonment in the discretion of the court. (1945, c. 974, s. 2.)

## ARTICLE 10.

*Regulation or Prohibition of Sale of Wine.*

§ 18-119. **Certain counties authorized to regulate or prohibit sale of wine.**—From and after March 21, 1945, the board of county commissioners of Buncombe, Caswell, Chatham, Cleveland, Duplin, Gates, Hertford, Montgomery, Moore, Richmond, Rockingham and Rutherford counties shall have full power and authority, by resolution duly adopted, to regulate or prohibit the sale of wine within said respective counties, except that it may not prohibit the sale of wine in any municipality of said counties unless the governing body adopts a resolution prohibiting the sale of wine within the corporate limits of said municipality. (1945, c. 1076, s. 1; 1947, c. 886, s. 1; c. 918, s. 1.)

**Editor's Note.**—By Session Laws 1945, c. 961, the commissioners of Swain County, and the governing authority of any municipality therein, may decline to issue any li-  
cense authorized under this chapter for the sale of wine. And by Session Laws 1945, cc. 927, 1092, the commissioners of Bladen County may do the same.

§ 18-120. **Municipalities in certain counties authorized to regulate or prohibit sale of wine.**—The governing body of any municipality in Buncombe, Caswell, Chatham, Cleveland, Duplin, Gates, Hertford, Montgomery, Moore, Richmond, Rockingham and Rutherford counties, from and after March 21, 1945, shall have full power and authority, by resolution adopted, to regulate or prohibit the sale of wine within the corporate limits of its municipality. (1945, c. 1076, s. 2; 1947, c. 886, s. 2; c. 918, s. 2.)

§ 18-121. **Rules and regulations.**—The board of county commissioners of Buncombe, Caswell, Chatham, Cleveland, Duplin, Gates, Hertford, Montgomery, Moore, Richmond, Rockingham and Rutherford counties and/or the governing body of any municipality of said counties may adopt rules and regulations regulating the sale of wine within the territory specified in §§ 18-119 and 18-120, fixing the hours of sale, the places of business to which license may be issued, the location of places of business which may engage in the sale of wine, and pass upon the qualifications of applicants for license and may in its discretion prescribe the terms and conditions upon which a licensee may engage in the sale of wine. (1945, c. 1076, s. 3; 1947, c. 886, s. 3; c. 918, s. 3.)

§ 18-122. **Effective date of resolution prohibiting sale.**—Upon the passage or adoption of any resolution as provided in this article, prohibiting the sale of wine, any person, firm, or corporation theretofore licensed to sell wine and having on hand stocks of wine, shall have thirty (30) days from the date of the passage of such resolution in which to dispose of such stock of wine. (1945, c. 1076, s. 4.)

§ 18-123. **Violation a misdemeanor.**—Any person, firm, or corporation violating the provisions of this article or any resolution adopted by the board of commissioners of either Buncombe, Caswell, Chatham, Cleveland, Duplin, Gates,

Hertford, Montgomery, Moore, Richmond, Rockingham and Rutherford counties or the governing body of any municipality therein, pursuant to the authority prescribed herein, shall be guilty of a misdemeanor, and upon conviction or confession of guilt, shall be punished in the discretion of the courts. (1945, c. 1076, s. 5; 1947, c. 886, s. 4; c. 918, s. 4.)

#### ARTICLE 11.

##### *Elections on Question of Sale of Wine and Beer.*

§ 18-124. **Provision for elections in counties or municipalities.** — (a) Compliance with Article Required.—For the purpose of determining whether or not wine or beer or both shall be sold in any municipality having a population of one thousand (1,000) or more according to the last federal census or within the area of any county outside the corporate limits of such a municipality, an election shall be called within any such municipality or within the county as a whole when, and only when, the conditions of this article are complied with.

(b) Petition Requesting Election.—Upon the presentation to it of a petition signed by twenty-five per cent (25%) of the registered voters of the county that voted for Governor in the last election requesting that an election be held for the purpose of submitting to the voters of the county the question of whether or not wine or beer or both shall legally be sold therein, the county board of elections shall call an election for the purpose of submitting said question or questions to the voters of the county.

(c) Requirements Concerning Petition.—No petition filed pursuant to the provisions of this article shall be considered by the county board of elections unless said petition shall state upon its face that at the election requested by those signing the petition there shall be submitted to the voters (i) the question of the legal sale of wine or (ii) the question of the legal sale of beer or (iii) the question of the legal sale of both wine and beer. Nor shall any petition be considered unless it states that the signers thereof are registered voters of the county in which the election is requested. The signatures on said petition shall be in the genuine handwriting of the signers, and said petition shall show opposite the name of each signer the correct precinct in which petitioner last voted. Failure to comply with any of the provisions herein shall disqualify the name of said petitioner.

(d) Time of Calling Election.—The county board of elections shall upon request, prepare and furnish petition forms to any person wishing to circulate a petition calling for an election on beer or wine or both. The board of elections, having had a request for petition forms, shall date such forms and the petition must be completed and returned to the board of elections within ninety (90) days from date of delivery to petitioner. Failure to return such petition in ninety (90) days shall render the same void. It shall also be the duty of the board of elections, upon release of petition forms, to give public notice of the fact that such petition is being circulated. Whenever a petition for an election is presented to the county board of elections, pursuant to the provisions of this article, said board shall within thirty (30) days call the election petitioned for.

(e) Notice and Conduct of Election.—Thirty days' public notice shall be given of any election called pursuant to the provisions of this article prior to the opening of the registration books for the same, and such election shall be held under the same law and regulations as are provided for the election of members of the General Assembly, except that no absentee ballots shall be voted in said election.

(f) Restrictions as to Time of Election.—No election shall be held pursuant to the provisions of this article in any county within sixty (60) days of the holding of any general election, special election, or primary election in said county or any municipality thereof. Provided, however, that if, in any petition filed pursuant to the provisions of G.S. 18-124, or G.S. 18-127, or other provision, it shall be requested that an election be held on the same day as any election called to determine

whether alcoholic beverage control stores should be operated in any city or county, the city or county board of elections or the governing body of any municipality, as the case may be, may call the election on the same day as the election on alcoholic beverage control stores. In such case it shall be within the discretion of the city or county board of elections, or the governing body of any municipality, as the case may be, to place the questions pertaining to the sale of beer and/or beer and wine and the establishment of alcoholic beverage control stores on the same ballot or on separate ballots, unless the petition presented to the board, signed by the requisite number of citizens, specifies the method and manner of balloting, in which case the same would be controlling. Provided further, that when the calling of an election is provided by special act to determine whether alcoholic beverage control stores shall be operated in any city or county, the city or county board of elections or the governing body of any municipality may place the questions pertaining to the sale of beer and/or beer and wine and the establishment of alcoholic beverage control stores on the same ballot and in the same question whenever such special act does not require a petition or does not provide sufficient time for compliance with G.S. 18-124 or G.S. 18-127.

(g) **Time between Elections.**—Whenever an election is held pursuant to the provisions of this article in any county, no other election pursuant to the provisions of this article shall be held in such county within three (3) years of the holding of the preceding election pursuant to the provisions of this article: Provided, that this subsection shall not prevent the holding of a municipal election in such county as hereinafter provided within three (3) years of the holding of said county election. (1947, c. 1084, s. 1; 1951, c. 999, ss. 1, 2; 1963, c. 265, ss. 1, 2; 1965, c. 506.)

**Local Modification.**—Moore, as to subsection (f): 1951, c. 732. Session Laws 1955, c. 308, s. 2, amended this article by making it unlawful to sell beer or wine within the town of Wake Forest or within one mile thereof.

**Editor's Note.**—For brief discussion of the 1947 act from which this article was codified, see 25 N.C.L. Rev. 382.

The 1963 amendment substituted "twenty-five per cent (25%)" for "fifteen per cent (15%)" near the beginning of subsection (b). It also added the second and third sentences of subsection (f).

The 1965 amendment rewrote the third sentence, and added the fourth sentence, of subsection (f).

**Effect of Mere Irregularity.**—The provisions of subsection (a) of this section are construed to mean that all conditions contained in this article, which are essential to the conduct of a fair and impartial election, must be observed. But the failure to observe the strict letter of a provision authorizing the calling of an election, which failure is not alleged to have been prejudicial to anyone, nor to have had any bearing whatever on the outcome of the election, will be treated as a mere irregularity and such election will not be invalidated thereby. *Green v. Briggs*, 243 N.C. 745, 92 S.E.2d 149 (1956).

**Requisite Signers of Petition.**—The requirement that a petition for an election on the question of prohibiting the sale of beer

and wine in a county shall be signed by 15% [now 25%] of the registered voters of the county who voted for Governor in the last general election, was held to refer to the total number of votes cast for Governor in such election and does not require that each signer of the petition should have personally voted for gubernatorial candidate in such election. *Weaver v. Morgan*, 232 N.C. 642, 61 S.E.2d 916 (1950).

**The failure of the board of elections to give statutory notice** of its release of petition forms for the calling of an election under this section, when the release of such forms is promptly given wide publicity by press and radio, will not invalidate the election, there being a substantial compliance with the requirement of the statute, and the failure of statutory notice not being prejudicial. *Green v. Briggs*, 243 N.C. 745, 92 S.E.2d 149 (1956).

**Restriction as to Time of Election.**—A county may not hold an election on the question of legalizing the sale of beer and wine therein within sixty days from an election in a municipality of the county on the same question, irrespective of the time of making the order calling such election. *Ferguson v. Riddle*, 233 N.C. 54, 62 S.E.2d 525 (1950).

As this section makes no exceptions as to the requirement that an election on the question of legalizing the sale of beer and wine shall not be held within sixty days of the holding of a municipal election it is



always within the power of a municipality in the county, if it sees fit, to render ineffectual a county election on the legal sale of beer and wine by calling a municipal election within the sixty-day period. *Ferguson v. Riddle*, 233 N.C. 54, 62 S.E.2d 525 (1950).

The fact that a municipal primary election is held less than sixty days subsequent to a local option election does not invalidate the local election, under subsection (f) of this section, if the municipal primary election is held without constitutional or statutory authority and is, therefore, a legal nullity. *Tucker v. A.B.C. Bd.*, 240 N.C. 177, 81 S.E.2d 399 (1954).

The statutory requirement that a beer and wine election should be called within thirty days of the date of the return of the petitions is for the benefit of the propo-

nents of such election, and when there is valid reason for delay and such delay does not prejudice the rights of anyone or affect the outcome of the election, opponents of the election may not complain thereof. *Green v. Briggs*, 243 N.C. 745, 92 S.E.2d 149 (1956).

If the board of elections fails to call an election under this section within thirty days of the date of the return of the petitions and if there is no valid reason for the delay in calling the election, the proponents may move for a mandamus after the expiration of the thirty days. *Green v. Briggs*, 243 N.C. 745, 92 S.E.2d 149 (1956).

Cited in *State v. Cochran*, 230 N.C. 523, 53 S.E.2d 663 (1949); *Rider v. Lenoir County*, 236 N.C. 620, 73 S.E.2d 913 (1952).

**§ 18-125. Form of ballots.**—If such election is called to determine whether or not wine shall be sold within the county, the ballot shall contain the following:

- ☐ For the legal sale of wine
- ☐ Against the legal sale of wine

If such election is called to determine whether or not beer shall be sold within the county, the ballot shall contain the following:

- ☐ For the legal sale of beer
- ☐ Against the legal sale of beer

If such an election is called to determine whether or not wine and/or beer shall be sold within the county, the ballot shall contain the following:

- ☐ For the legal sale of wine
- ☐ Against the legal sale of wine
- ☐ For the legal sale of beer
- ☐ Against the legal sale of beer

(1947, c. 1084, s. 2.)

**§ 18-126. Effect of vote for or against sale of beer or wine.**—(a) **Vote on Sale of Beer.**—If a majority of the votes cast in such election shall be for the legal sale of beer, then the governing board of the county and the governing board of each municipality in said county shall issue licenses to sell beer as defined in § 18-64 as provided in chapter 18 of the General Statutes notwithstanding any public, special, local or private act to the contrary, whether passed before or after the ratification of this article.

If a majority of the votes cast in such election shall be against the legal sale of beer, then after the expiration of sixty (60) days from the day on which the election is held it shall be unlawful to sell or possess for the purpose of sale in the county, either within or without the corporate limits of municipalities therein, any beer of more than one-half of one per cent of alcohol by volume, and such sale or possession for the purpose of sale shall constitute a misdemeanor, the punishment for which shall be in the discretion of the court. This paragraph shall not apply to any municipality in which an election is held as hereinafter provided after the holding of a county election, and at which a majority of the votes cast shall be for the sale of beer.

(b) **Vote on Sale of Wine.**—If a majority of the votes cast in such election shall be for the legal sale of wine, then the governing board of the county and the governing board of each municipality in said county shall issue to applicants entitled to same licenses to sell wine as defined in §§ 18-64 and 18-99 as provided

in chapter 18 of the General Statutes notwithstanding any public, special, local or private act to the contrary, whether passed before or after the ratification of this article.

If a majority of the votes cast in such election shall be against the legal sale of wine, then after the expiration of sixty (60) days from the day on which the election is held it shall be unlawful to sell or possess for the purpose of sale in the county, either within or without the corporate limits of municipalities therein, any wine of more than three per cent (3%) of alcohol by volume, and such sale or possession for the purpose of sale shall constitute a misdemeanor, the punishment for which shall be in the discretion of the court. This paragraph shall not apply to any municipality in which an election is held as hereinafter provided after the holding of a county election, and at which a majority of the votes cast shall be for the sale of wine. (1947, c. 1084, s. 3.)

**Stay of Judgment.**—Defendant was convicted of the unlawful sale of tax-paid beer in a trial free from error. The solicitor formally admitted that at the time of the sale, defendant possessed and displayed licenses for the sale of beer from the city, county and State, which “were then in full force and effect,” and this admission was fully

supported by the testimony offered. The Supreme Court stayed the judgment, since the judicial admission of the solicitor brought the sale within the protective provisions of the statute and disclosed that no criminal offense had been committed. *State v. Cochran*, 230 N.C. 523, 53 S.E.2d 663 (1949).

**§ 18-127. Elections in certain municipalities after majority vote in county against sale of wine or beer.**—The governing board of any municipality having a population of 1,000 or more persons according to the last federal census and located in a county which has voted against the legal sale of beer or wine or both shall, upon receipt of a petition bearing the names of 25% of the registered voters who voted for the governing body of such municipality in the last election, call an election to determine whether or not such prohibited beverage or beverages shall, notwithstanding the results of such county election, legally be sold and licensed within the corporate limits of said municipality for:

- (1) “On-premises” and “off-premises” sales,
- (2) “Off-premises” sales only, or
- (3) “On-premises” sales by Grade A hotels and restaurants only and “off-premises” sales by other licensees.

The petition shall state the particular question to be voted upon as to either or both of beer and wine and the ballot shall be governed by the language of the petition; but no election shall be held in such municipality under this section unless the sale of such beverage is at that time prohibited in the county in which such municipality is located.

No petition shall be considered unless it complies with this section nor unless it states that the signers thereof are registered voters in the municipality in which the election is requested.

The provisions of this article, including the laws and regulations adopted by reference, relating to county elections, including the provisions relating to the calling of elections, notice of elections, holding of elections, and results of elections, are hereby in all respects made applicable to any municipal election held pursuant to the provisions of this section except that the county board of elections shall not conduct any such election.

The majority of votes cast at such elections on each question presented on the ballot shall determine the legality within the municipality of the type of sale involved in such question. If a majority of the votes cast in an election held pursuant to the provisions of this section in answer to any local option question on wine or beer shall be for the type of sale voted upon, then such sales shall thereafter be lawful in that municipality and the governing board of that municipality shall, notwithstanding any public, special, local or private act, whenever passed, to the contrary, issue appropriate licenses of the type authorized to all qualified

applicants. If a majority of the votes cast in an election held pursuant to the provisions of this section in answer to any local option question on wine or beer shall be against the type of sale voted upon, then unless authorized by subsequent election, sales of the type denied by such vote shall continue to be unlawful.

Sale or possession for the purpose of sale in violation of the provisions of this section shall constitute a misdemeanor, the punishment for which shall as hereinbefore provided be in the discretion of the court. (1947, c. 1084, s. 4; 1957, c. 816; 1963, c. 265, s. 3.)

**Local Modification.**—Town of Shallotte: substituted “25%” for “15%” near the middle of the first paragraph.

**Editor’s Note.** — The 1963 amendment

**§ 18-127.1. Elections on question of sale of 3.2 beer in certain counties.** — The governing body of any incorporated municipality having a population of two hundred (200) people or more at the time of the presentation of the petition hereinafter referred to and having organized municipal police protection, located in any county which has voted against the legal sale of beer, shall, upon receipt of a petition bearing the names of twenty-five per cent (25%) of the registered voters who voted for the governing body in the last election, call an election to determine whether or not beer containing alcohol of not more than three and two-tenths per cent (3.2%) by weight shall be sold legally, either for on premises consumption or off premises consumption or both, the ballot to be governed by the language of the petition; provided, however, the provisions of this section shall not apply to any incorporated municipality wherein beer is now legally sold unless an election shall be called under the provisions of chapter 18 of the General Statutes and the majority of the ballots therein cast shall be against the legal sale of beer as defined in G.S. 18-64 (1).

This section shall not apply to the counties of: Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Bladen, Brunswick, Burke, Cabarrus, Caldwell, Chatham, Cherokee, Clay, Cleveland, Columbus, Cumberland, Davidson, Davie, Duplin, Gaston, Graham, Harnett, Haywood, Hertford, Hoke, Jackson, Johnston, Lee, Lincoln, McDowell, Macon, Madison, Mitchell, Montgomery, Moore, Northampton, Pender, Person, Randolph, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Union, Watauga, Wayne, Wilkes, Yadkin and Yancey.

In the event the results of the election are for the legal sale of the above described beverage, such beverage shall be subject to the laws, rules and regulations applicable to full-strength beer. (1955, cc. 802, 1083, 1164; 1963, c. 265, s. 4.)

**Editor’s Note.** — The 1963 amendment for “fifteen per cent (15%)” near the middle substituted “twenty-five per cent (25%)”

**§ 18-127.2. Provisions of § 18-127 extended to municipalities having seasonal population of 1,000 or more.**—The provisions of G.S. 18-127 and all portions thereof are extended to include any incorporated municipality having a seasonal population of one thousand (1,000) or more persons.

An incorporated municipality shall be deemed to have a seasonal population of one thousand (1,000) or more persons if it shall be determined by the mayor and governing body of the municipality that for a period of six (6) weeks in the year such municipality has an average daily population of one thousand (1,000) or more people. An affirmative finding to this effect entered upon the records of the municipality shall be determinative of this question.

This section shall not apply to municipalities located in the counties of Ashe, Avery, Bladen, Burke, Cherokee, Clay, Columbus, Dare, Davie, Macon, Northampton, Robeson, Rutherford, Scotland, Stanly, Union and Watauga. (1963, c. 1092.)

**Local Modification.** — Watauga, town of Blowing Rock: 1965, c. 874.



§ 18-128. **Wine for sacramental purposes not prohibited.**—Nothing in this article shall prevent the purchase or possession of wine for sacramental purposes by any organized church or ordained minister of the gospel. (1947, c. 1084, s. 6.)

**Local Modification.** — Dare, Moore and Washington: 1951, c. 257.

§ 18-128.1. **Certain wholesalers excepted.**—Nothing in this article shall prevent bottlers, manufacturers or wholesalers of beer, who have complied with article 12 of chapter 18 of the General Statutes, from bottling, manufacturing, possessing, transporting or selling beer as a wholesaler to any person, firm or corporation who has complied with the provisions of article 12 of chapter 18 of the General Statutes. (1951, c. 998, s. 1.)

## ARTICLE 12.

### *Additional Powers of State Board over Wine and Malt Beverages.*

**Editor's Note.** — Session Laws 1963, c. 426, s. 12, rewrote this article, which formerly comprised §§ 18-129 to 18-144, to appear as §§ 18-129 to 18-142. The princi-

pal change was to make the article applicable to wine as well as malt beverages. For comment on this article prior to the 1963 amendment, see 27 N.C.L. Rev. 463.

§ 18-129. **Power of State Board of Alcoholic Control to regulate distribution and sale of wine and malt beverages; determination of qualifications of applicant for permit, etc.**—The State Board of Alcoholic Control shall be referred to herein as "the Board", and said Board in addition to all powers now conferred upon it by law is hereby vested with additional powers to regulate the distribution and sale of wine and malt beverages as follows:

The distribution and sale of beer and wine in this State shall be subject to all existing laws and the following additional authority and powers are hereby expressly granted to the Board.

The Board shall have the sole power, in its discretion, to determine the fitness and qualifications of an applicant for a permit to sell, manufacture or bottle beer or wine. The Board shall inquire into the character of the applicant, the location, general appearance and type of place of business of the applicant. (1949, c. 974, s. 1; 1963, c. 426, s. 12.)

§ 18-130. **Application for permit; contents.**—All resident bottlers, wineries or manufacturers of beer or wine and all resident wholesalers and retailers of beer or wine shall file a written application for a permit with the State Board of Alcoholic Control, and in the application shall state under oath therein:

- (1) The name and residence of the applicant and the length of his residence within the State of North Carolina;
- (2) The particular place for which the license is desired, designating the same by street and number if practicable; if not, by such other apt description as definitely locates it; and if said place is outside a municipality within the county, the distance to the nearest church or public or private school from said place;
- (3) The name of the owner of the premises upon which the business licensed is to be carried on, and, if the owner is not the applicant, that such applicant is the actual and bona fide lessee of the premises;
- (4) That the place or building in which it is proposed to do business conforms to all laws of health and fire regulations applicable thereto, and is a safe and proper place or building;
- (5) That the applicant intends to carry on the business authorized by the permit for himself or under his immediate supervision and direction;
- (6) That the applicant has been a bona fide resident of this State for a pe-

- riod of at least one (1) year immediately preceding the date of filing his application and that he is not less than twenty-one years of age;
- (7) The place of birth of applicant and that he is a citizen of the United States, and, if a naturalized citizen, when and where naturalized;
  - (8) That the applicant has not been convicted of, or entered a plea of guilty or nolo contendere to, a felony or other crime involving moral turpitude within the past three (3) years; that the applicant's citizenship has been restored by the court if he has been so deprived of it; that he has not, within the two (2) years next preceding the filing of the application, been adjudged guilty of violating the prohibition or liquor laws, either State or federal; and it shall be within the discretion of the Board, after making investigation, to determine whether or not any person who has ever been convicted of, or entered a plea of guilty or nolo contendere to, a felony shall be deemed as a suitable person to receive and hold a malt beverage or wine permit;
  - (9) That the applicant has not during the three (3) years next preceding the date of said application had any permit or license issuable hereunder or any license issued to him pursuant to the laws of this State, or any other state, to sell alcoholic beverages of any kind revoked;
  - (10) That the applicant is not the holder of a federal special tax liquor stamp;
  - (11) If the applicant is a firm, association or partnership, the application shall state the matters required in subdivisions (6), (7), (8) and (9), with respect to each of the members thereof, and each of said members must meet all of the requirements in said subdivisions provided;
  - (12) If the applicant is a corporation, organized or authorized to do business in this State, the application shall state the matters required in subdivisions (7), (8) and (9), with respect to each of the officers and directors thereof, and any stockholder owning more than twenty-five per cent (25%) of the stock of such corporation, and the person or persons who shall conduct and manage the licensed premises for the corporation, and each of said persons must meet all the requirements in said subdivisions provided; provided, however, that the requirement as to residence shall not apply to said officers, directors and stockholders of such corporation, however, such requirement shall apply to any such officer, director or stockholder, agent or employee who is also the manager and in charge of the premises for which permit is applied for, but the Board may, in its discretion, waive such requirement. (1949, c. 974, s. 1; 1963, c. 119; c. 426, s. 12.)

**Editor's Note.**—Session Laws 1963, c. 119, added the words “but the Board may in its discretion waive such requirement” at the end of subdivision (12). **Applied** in *Tucker v. A.B.C. Bd.*, 240 N.C. 177, 81 S.E.2d 399 (1954).

**§ 18-131. Permit required for selling, distributing, etc., malt beverages or wine for purpose of resale.**—All manufacturers of malt beverages, or wine, wineries, brewers, bottlers of malt beverages or wine, or any other persons selling or soliciting orders for, delivering or distributing malt beverages or wine for the purpose of resale, whether on their own account or for or on behalf of other persons, whether any of such manufacturers, brewers, bottlers, or other persons are residents or nonresidents of this State shall, as a condition precedent to the sale, or the offering for sale, or delivery, distribution or soliciting of orders for any malt beverages or wine described in G.S. 18-64 and in articles 4, 5 and 7 of this chapter, apply for and obtain from the State Board of Alcoholic Control a permit for the sale, distribution, soliciting orders for or delivery of malt beverages or wine. The sale, distribution, soliciting orders for or delivery of malt beverages or wine in this State without such a permit shall constitute a misdemeanor.

The Board shall have the power to adopt, repeal, and amend rules and regulations to carry out the provisions of this section, and the Board may after hearing suspend or revoke this said permit of any permittee for a violation of the provisions of the State Malt Beverage and Wine Laws or of any rule or regulation adopted by said Board.

The fact that any brewery, winery, manufacturer or bottler of malt beverages or wine has applied for or obtained a permit under the provisions of this article shall not be construed as domesticating said brewery, manufacturer or bottler, and shall not be evidence for any other purpose that such brewery, manufacturer or bottler is doing business in North Carolina. (1957, c. 1448; 1963, c. 426, s. 12.)

**Editor's Note.**—Prior to the 1963 amendment of this article this section appeared as § 18-130.1. For section which formerly appeared as § 18-131, see § 18-132.

**§ 18-132. Application to be verified; refusal or revocation of permit; penalty for false statement; independent investigation of applicant.**—The application must be verified by the affidavit of the applicant before a notary public or other person duly authorized by law to administer oaths. The foregoing provisions and requirements are mandatory prerequisites for the issuance of a permit and in the event any applicant fails to qualify under the same, or if any false statement is knowingly made in any application, permit shall be refused. If a permit is granted on any application, containing a false statement knowingly made, said permit shall be revoked and the applicant upon conviction shall be guilty of a misdemeanor and subject to the penalty provided by law for misdemeanors. In addition to the information furnished in any application, the chief of the wine and malt beverage division shall make such additional and independent investigation of each applicant, and of the place to be occupied, as deemed necessary or advisable. (1949, c. 974, s. 2; 1963, c. 426, s. 12.)

**Editor's Note.**—Prior to the 1963 amendment of this article this section appeared as § 18-131. For section which formerly appeared as § 18-132, see § 18-133.

**§ 18-132.1. Application fees.** — Every person, firm, association, partnership, or corporation applying to the State Board of Alcoholic Control for a permit to sell beer or wine under the provisions of § 18-130 shall pay an application fee at the time of application according to the following schedule:

- (1) For an application for a permit under the provisions of § 18-130, a fee of twenty-five dollars (\$25.00); provided, that if applications for a beer permit and a wine permit are filed at the same time for the same location, the total fee shall be twenty-five dollars (\$25.00).
- (2) For an application for a new permit under the provisions of § 18-130 by reason of the fact that a new manager has been assigned to an establishment for which a permit or permits are presently held a fee of ten dollars (\$10.00); provided, this fee shall not be payable if the new manager has within thirty (30) days of the time of filing of the application held a permit as the manager of another establishment of the same person, firm, association, partnership, or corporation.

All fees required by this section shall be paid by check or money order made payable to the State Board of Alcoholic Control, and they shall be deposited by the State Board of Alcoholic Control with the State Treasurer.

The application of any person, firm, association, partnership, or corporation who fails to comply with the provisions of this section shall be refused, and if the permit has been granted it shall be canceled. (1965, c. 326.)

**§ 18-133. Permit revoked if federal special tax liquor stamp procured.**—If an applicant, after obtaining a permit, shall procure a federal special tax liquor stamp, the Board shall revoke his permit forthwith. (1949, c. 974, s. 3; 1963, c. 426, s. 12.)

**Editor's Note.**—Prior to the 1963 amendment of this article this section appeared as § 18-132. For section which formerly appeared as § 18-133, see § 18-134.



**§ 18-134. Notice of intent to apply for permit; posting or publication of notice; objections to issuance of permit and hearing thereon.—**

Every person intending to apply for any permit to sell beer or wine at retail hereunder shall, not more than thirty (30) days and not less than ten (10) days before applying to the Board for such permit, give written notice of such intention to the county and municipal authorities in which applicant proposes to maintain his business, and shall post a notice of such intention on the front door of the building, place or room where he proposes to engage in such business, or publish such notice at least once in a newspaper published in or having a general circulation in the county, city or town wherein such persons propose to engage in such business.

Any objections to the issuance of the permit to an applicant shall be filed in writing with the Board and the Board shall not refuse to grant any such permit except upon a hearing, if requested in writing by applicant, held after ten days' notice to the applicant of the time and place of such hearing, which notice shall contain a statement of the objections to granting such permit and shall be served on the applicant by sending same to the applicant by registered mail to the address given in his application or by personal service by an agent of the Board. The applicant shall have the right to produce evidence in his behalf at the hearing and be represented in person or by counsel. (1949, c. 974, s. 4; 1963, c. 426, s. 12.)

**Editor's Note.**—Prior to the 1963 amendment of this article this section appeared as § 18-133.

**Applied in** *Tucker v. A.B.C. Bd.*, 240 N.C. 177, 81 S.E.2d 399 (1954).

**§ 18-135. Certification to Department of Revenue of permits issued; issuance of license; revocation of permit or license.—**The Board shall certify to the Department of Revenue the names, locations and addresses of all persons to whom the Board has issued permits, and no license issued to an applicant shall be valid until the applicant has obtained the permit as provided by this article.

Provided, however, that when a permit has been issued by the Board the permittee, upon payment of fees now provided by law, shall have license issued to him by the Commissioner of Revenue and by the governing body of any county or municipality wherein said permittee shall conduct his business. In all cases where a permit is revoked by the Board, such revocation shall render void any State, county or municipal license issued hereunder and in the event any county or municipality through its governing body shall for cause revoke any license such revocation shall automatically revoke any other malt beverage or wine license or permit held by the licensee.

Provided, further, however, that the jurisdiction herein conferred upon the Board to revoke or suspend permits shall not preclude the governing body of any county or municipality from revoking or suspending the license of any retail licensee within its jurisdiction for violating any existing law regulating the sale of malt beverages or wine or of the provisions of this article. In any proceeding before such governing body for the revocation or suspension of a retailer's license, the licensee shall be given due notice of the charges against him and be given an opportunity to appear personally and by counsel in his defense. (1949, c. 974, s. 6; 1963, c. 426, s. 12.)

**Applied in** *Sinodis v. State Bd. of Alcoholic Control*, 258 N.C. 282, 128 S.E.2d 587 (1962).

**§ 18-136. Refusal, suspension or revocation of permit upon personal disqualification, etc.—**The Board may refuse to issue a new permit or may suspend or revoke any permit issued by it if in the discretion of the Board it is of the opinion that the applicant or permittee is not a suitable person to

hold such permit or that the place occupied by the applicant or permittee is not a suitable place. (1949, c. 974, s. 7; 1953, c. 1207, s. 5; 1963, c. 426, s. 12.)

**§ 18-137. Hearing upon suspension or revocation of permit.**—Before the Board may suspend or revoke any permit issued under the provisions of this article, at least ten days' notice of such proposed or contemplated action by the Board shall be given to the affected permittee. Such notice shall be in writing, shall contain a statement in detail of the grounds or reasons for such proposed or contemplated action of the Board, and shall be served on the permittee by sending the same to such permittee by registered or certified mail to his last known post-office address or by personal service by an agent of the Board. The Board shall in such notice appoint a time and place when and at which the said permittee shall be heard as to why the said permit shall not be suspended or revoked. The permittee shall at such time and place have the right to produce evidence in his behalf and to be represented by counsel. (1949, c. 974, s. 8; 1963, c. 426, s. 12.)

**Hearing Sufficient to Meet Requirements of Due Process.**—A hearing by an examiner for the State Alcoholic Control Board, under provisions of statute and the rules promulgated pursuant thereto, of which hearing the permittee is given notice, is represented by counsel, introduces evidence, cross-examines the adverse witnesses, all witnesses being sworn, with right to object and except to any ruling and argue the matter, is held sufficient to meet the requirements of due process of law. *Sinodis v. State Bd. of Alcoholic Control*, 258 N.C. 282, 128 S.E.2d 587 (1962).

The failure to furnish a copy of the hearing examiner's proposed findings and recommendations without a request can-

not be held violative of due process or the statutes providing for a hearing. *Sinodis v. State Bd. of Alcoholic Control*, 258 N.C. 282, 128 S.E.2d 587 (1962).

**Failure to Request Hearing by Board.**—The holder of a permit to sell malt beverages is entitled, after a hearing by an examiner for the Board of charges of violations of law warranting a revocation of permit, to request a hearing by the Board, and when he does not request such hearing after notice of the date the Board would consider the matter, his application for jurisdiction review under § 143-307 must be dismissed for failure to exhaust available administrative remedies. *Sinodis v. State Bd. of Alcoholic Control*, 258 N.C. 282, 128 S.E.2d 587 (1962).

**§ 18-138. Rules and regulations for enforcement of article.**—The Board is hereby vested with power to adopt rules and regulations for carrying out the provisions of this article, but not inconsistent herewith, and to amend or repeal such regulation. Every regulation or amendment thereto adopted by the Board shall become effective on the tenth day after the date of its adoption and the filing of a certified copy thereof in the office of the Secretary of State. (1949, c. 974, s. 9; 1963, c. 426, s. 12.)

Cited in *Sinodis v. State Bd. of Alcoholic Control*, 258 N.C. 282, 128 S.E.2d 587 (1962).

**§ 18-139. Effect of article on existing local regulations as to sale of beer and wine.**—Nothing in this article shall require any county or municipality to issue licenses for any territory where the sale of beer or wine is prohibited by special legislative act or for any area where the sale or possession for the purpose of sale of beer or wine is unlawful as a result of local option election, and this article shall not repeal any special, public-local or private act prohibiting or regulating the sale of beer or wine in any county in this State, or any act authorizing the board of commissioners of any county of this State, or the governing body of any municipality, in its discretion, to prohibit the sale of beer or wine. (1949, c. 974, s. 10; 1963, c. 426, s. 12.)

**§ 18-140. Chief of wine and malt beverage division and assistants; inspectors.**—(a) To more adequately insure the strict enforcement of the regulations of the Board and of the provisions of this article, the Board shall ap-

point a person to be known and designated as "chief of wine and malt beverage division," who shall be in charge of the administration of such division. Said Board, in addition to said chief of wine and malt beverage division, may appoint one or more assistants to the chief of the wine and malt beverage division, all of whom shall have full authority to make investigations, hold hearings and to make findings of fact. Upon the approval of the said Board of the findings and orders of suspension or revocation of the permit of any licensee, such findings of said chief, assistant or assistants shall be deemed to be the findings and the order of the Board. The Board shall employ an adequate number of field men to be designated as "inspectors," not less than fifteen in number who shall devote their full time to the enforcement of the provisions of this article and such rules and regulations as may be promulgated thereunder by the Board.

(b) Such inspectors shall investigate the operation of the licensed premises of all persons licensed under any article of chapter 18, examine the books and records of such licensee, procure evidence with respect to the violation of this article or any rules and regulations adopted thereunder and perform such other duties as the Board may direct. Such inspectors shall have the right to enter any such licensed premises in the State in the performance of their duty at any hour of the day or night. Refusal by such permittee or by any other employee of a permittee to permit such inspectors to enter the premises shall be cause for revocation or suspension of the permit of such permittee. The inspectors so appointed shall, after taking the oath prescribed for peace officers, have the same power and authority in the enforcement of this article as other peace officers.

(c) All alcoholic beverage control officers now employed or who may hereafter be employed may be used by the Board as inspectors in counties and cities having alcoholic beverage control stores in addition to the other inspectors provided for under this article, and shall be vested with all powers and authority as herein vested in inspectors. (1949, c. 974, s. 11; 1951, c. 1056, s. 1; c. 1186, ss. 1, 2; 1963, c. 426, s. 12.)

**§ 18-141. Sale and consumption of beer or wine during certain hours prohibited.**—No beer or wine shall be sold between the hours of 11:45 o'clock P. M. and 7:30 o'clock A. M., nor shall any beer or wine be consumed in any place where beer or wine is sold between the hours of 12:00 o'clock midnight and 7:30 o'clock A. M. (1949, c. 974, s. 12; 1951, c. 997, s. 1; 1963, c. 426, s. 12.)

**Editor's Note.**—For effect of this section on § 18-105 prior to the 1963 amendment to that section, see 27 N.C.L. Rev. 463.

**Cited in** Davis v. Charlotte, 242 N.C. 670, 89 S.E.2d 406 (1955); Boyd v. Allen, 246 N.C. 150, 97 S.E.2d 864 (1957).

**§ 18-142. Keeping places of business clean, etc.**—The Board shall require that all retail permit holders keep their places of business clean, well lighted and in an orderly manner. (1949, c. 974, s. 13; 1963, c. 426, s. 12.)

**§ 18-143:** Repealed by Session Laws 1955, c. 1313, s. 6.

**§ 18-144:** Repealed by Session Laws 1963, c. 426, s. 12.

### ARTICLE 13.

#### *Wholesale Malt Beverage Salesman's Permit.*

**§ 18-145. Permit required; renewal.**—Every salesman for a wholesale distributor of malt beverages shall apply, by May 1, 1951, to the Board for a wholesale salesman's permit to sell such beverages, and shall renew the permit by May 1 of each succeeding year thereafter. This shall be deemed to include salesmen stationed at the wholesaler's warehouse as well as route salesmen who sell and deliver malt beverages to retailers. All persons entering such employ-



ment after May 1, 1951, shall apply to the Board in like manner for a salesman's permit. (1951, c. 378, s. 1.)

**§ 18-146. Qualifications of applicant.**—Such salesman shall be twenty-one years of age, a citizen of the United States, and no salesman's permit shall be issued to any person who has been convicted within two (2) years, preceding the filing of his application, of violating the State or federal prohibition laws, or who has been convicted of, or entered a plea of guilty or nolo contendere to, a felony or of any crime involving moral turpitude within the past three (3) years and without restoration of his citizenship by the court. No salesman's permit shall be issued to any person whose permit or license issued to him pursuant to the laws of this State or any other state to sell alcoholic beverages of any kind has been revoked during the three (3) years next preceding the date of application for a permit. (1951, c. 378, s. 2; 1963, c. 426, s. 13.)

**Editor's Note.** — The 1963 amendment inserted in the latter part of the first sentence the words "or entered a plea of guilty or nolo contendere to," and the words "within the past three (3) years and without restoration of his citizenship by the court." It also substituted "three (3) years" for "two years" in the second sentence.

**§ 18-147. Salesmen licensed at time of ratification of article.**—All persons holding a malt beverage salesman's license on March 27, 1951 shall be deemed to have complied with all the requirements of the Board in filing application for a permit to sell malt beverages at wholesale, except in cases where the Board upon investigation finds as a fact that the holder of such a license is an undesirable person to be engaged in the beer business. (1951, c. 378, s. 3.)

**§ 18-148. License invalid until permit obtained.** — The Board shall certify to the Department of Revenue the names, locations, and addresses of all persons to whom the Board has issued wholesale salesmen's permits, and no license issued to an applicant shall be valid until the applicant has obtained a permit as provided by this article. (1951, c. 378, s. 4.)

**§ 18-149. Suspension and revocation; acting without permit a misdemeanor.**—The Board may suspend or revoke any permits issued by it if the salesman holding such permit is adjudged guilty by the Board of violating any of the North Carolina laws or regulations pertaining to the sale of malt beverages; any person who shall engage in the wholesale sale or distribution of malt beverages as a salesman without a permit from and after May 1, 1951, shall be guilty of a misdemeanor and fined or imprisoned, or both, in the discretion of the court. (1951, c. 378, s. 5.)

**§ 18-150. Salesman responsible for acts of helper.**—Each route salesman shall be responsible under this article for all sales and deliveries of malt beverages by his helper. (1951, c. 378, s. 6.)

**§ 18-151. Hearing.**—Permit holders cited for violation by the Board shall have the right to a hearing as provided by law in G.S. 18-137. (1951, c. 378, s. 7.)

**§ 18-152. Employing salesman who has no permit.**—No wholesale distributor of malt beverages shall after May 1, 1951, employ as a salesman any person who does not have a salesman's permit, and the permits of wholesale distributors violating the provisions of this section shall be subject to revocation or suspension by the Board. (1951, c. 378, s. 8.)

## Chapter 19.

### Offenses Against Public Morals.

- Sec.  
 19-1. What are nuisances under this chapter.  
 19-2. Action for abatement; injunction.  
 19-3. When triable; evidence; dismissal of complaint.  
 19-4. Violation of injunction; punishment.

- Sec.  
 19-5. Order abating nuisance; what it shall contain.  
 19-6. Application of proceeds of sale.  
 19-7. How order of abatement may be canceled.  
 19-8. Attorney's fees may be taxed as costs.

**§ 19-1. What are nuisances under this chapter.**—Whoever shall erect, establish, continue, maintain, use, own, or lease any building, erection, or place used for the purpose of lewdness, assignation, prostitution, gambling, or illegal sale of whiskey, or illegal sale of narcotic drugs as defined in the Uniform Narcotic Drug Act is guilty of nuisance, and the building, erection, or place, or the ground itself, in or upon which such lewdness, assignation, prostitution, gambling, or illegal sale of liquor is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided. (Pub. Loc. 1913, c. 761, s. 25; 1919, c. 288; C. S., s. 3180; 1949, c. 1164.)

**Cross References.**—As to criminal actions: For prostitution, see § 14-203 et seq.; for gambling, see § 14-289 et seq.; for unlawful sale of whiskey, see § 18-31 et seq.; for lewdness, etc., see § 14-190.

**Constitutionality.**—This and the following sections, providing for the abatement of public nuisances, are constitutional as a valid exercise of the police power of the State. *Carpenter v. Boyles*, 213 N.C. 432, 196 S.E. 850 (1938). See also *Barker v. Palmer*, 217 N.C. 519, 8 S.E.2d 610 (1940); *State v. Carolina-Virginia Racing Ass'n*, 239 N.C. 591, 80 S.E.2d 638 (1954); *State v. Carolina Racing Ass'n*, 241 N.C. 80, 84 S.E.2d 390 (1954).

**Agency Acting under Color of Legislative Authority.**—In *State ex rel. Amick v. Lancaster*, 228 N.C. 157, 44 S.E.2d 733 (1947), the action was brought under this chapter to enjoin as a nuisance the operation of a liquor store by a town pursuant to c. 862, 1947 Session Laws. The court held that since the alcoholic control board was acting "under color of legislative authority" the remedy by action under this chapter was inappropriate. But this ruling should be restricted to actions to enjoin the operations of a governmental board acting "under color of legislative authority," and should not be extended to actions to enjoin the operations of a private person, firm, association or corporation acting "under color of legislative authority." *State v. Carolina Racing Ass'n*, 241 N.C. 80, 84 S.E.2d 390 (1954).

**Betting on dog races under a pari-mutuel system having no other purpose than**

that of providing the facilities for placing bets, calculating odds, determining winnings, if any, constitutes gambling, and is subject to abatement by injunction as a statutory nuisance, under this chapter, unless specifically permitted by a constitutional statute. *State v. Carolina Racing Ass'n*, 241 N.C. 80, 84 S.E.2d 390 (1954).

**Race Track Operated under Unconstitutional Statute.**—Where the statute under which defendant maintains and operates a race track for pari-mutuel betting is unconstitutional, a private citizen may maintain an action in the name of the State to enjoin the operation of such track as a public nuisance, in proceeding under this chapter. *State v. Carolina-Virginia Racing Ass'n*, 239 N.C. 591, 80 S.E.2d 638 (1954).

**Establishment Facilitating Betting on Races.**—The maintenance of an establishment with ticker tape and other paraphernalia to facilitate the making of wagers on horse races, and in which offers to lay wagers were transmitted to race tracks outside the State, and through which wagers were paid off to successful betters, constitutes a public nuisance. *State v. Brown*, 221 N.C. 301, 20 S.E.2d 286 (1942).

**Authority of Municipalities Concerning Nuisances.**—Under the authority conferred upon a municipal corporation to adopt ordinances for the government of the corporation and to abate nuisances, no power is granted to enact that the permitting of prostitution by the owner or occupant of any house therein shall constitute such owner or occupant the keeper of a house of ill fame, nor to declare what shall be a

bawdy house or a disorderly house. *State v. Webber*, 107 N.C. 962, 12 S.E. 598 (1890).

**Nuisance Need Not Be Nucleus of Crime.**

—It is not essential to the nuisance defined by this section that the acts of the customers, which impart that quality to the premises and the business conducted there, should be violations of the criminal law, either generally speaking or under the terms of the statute. It is not necessary that the nuisance declared should have a nucleus of crime essential to its existence. While nuisance is frequently associated with criminal offenses, the law is not under the necessity of predicating one crime upon another to make valid its denunciation of an act which it denominates a nuisance. *State v. Brown*, 221 N.C. 301, 20 S.E.2d 286 (1942).

**Opening Safe on Premises Where Nuisance Maintained.** — Where, in an action under this section and § 19-2, to abate a public nuisance on the sole ground that the premises were used for the unlawful

sale of whiskey, etc., a safe found in the padlocked building was opened by the sheriff and no whiskey or other intoxicating beverages found therein, the court could not thereafter require that the safe be reopened for the purpose of taking an inventory thereof, there being nothing to show the materiality of anything in the safe as bearing upon the question of abatement. Such inventory would be an invasion of the property rights of defendant without due process of law. *State v. Flowers*, 247 N.C. 558, 101 S.E.2d 320 (1958).

**Applied in** *State ex rel. Amick v. Lancaster*, 228 N.C. 157, 44 S.E.2d 733 (1947).

**Cited in** *State v. Alverson*, 225 N.C. 29, 33 S.E.2d 135 (1945); *State v. Murphy*, 235 N.C. 503, 70 S.E.2d 498 (1952); *State v. Carolina-Virginia Racing Ass'n*, 240 N.C. 614, 83 S.E.2d 501 (1954); *State ex rel. Bowman v. Malloy*, 264 N.C. 396, 141 S.E.2d 796 (1965); *State v. Smith*, 265 N.C. 173, 143 S.E.2d 293 (1965).

**§ 19-2. Action for abatement; injunction.** — Whenever a nuisance is kept, maintained, or exists as defined in this chapter, the city prosecuting attorney, the solicitor, or any citizen of the county may maintain civil action in the name of the State of North Carolina upon the relation of such city prosecuting attorney, solicitor, or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists. In such action the court, or a judge in vacation, shall, upon the presentation of a petition therefor, alleging that the nuisance complained of exists, allow a temporary writ of injunction without bond, if it shall be made to appear to the satisfaction of the judge by evidence in the form of affidavits, depositions, oral testimony, or otherwise, as complainant may elect, unless the judge, by previous order, shall have directed the form and manner in which it shall be presented. When an injunction has been granted it shall be binding on the defendant throughout the county in which it was issued, and any violation of the provisions of injunction herein provided shall be a contempt, as hereinafter provided. (Pub. Loc. 1913, c. 761, s. 26; 1919, c. 288; C. S., s. 3181.)

**Local Modification.**—*McDowell*: 1959, c. 590, s. 1.

**Cross Reference.**—See note to § 19-1.

**Public Nuisances.**—This and the following sections are not applicable to proceedings brought to abate a public nuisance as defined by § 90-103. *State v. Townsend*, 227 N.C. 642, 44 S.E.2d 36 (1947).

**An action to abate a public nuisance by injunction or otherwise must be maintained in the name of the State,** and this section designates with particularity those who may become relators and prosecute the cause in the name of the State. *Dare County v. Mater*, 235 N.C. 179, 69 S.E.2d 244 (1952).

While the members of a county board of commissioners may, as individuals, become

relators under this section, they may not prosecute this action in the name of the county. *Dare County v. Mater*, 235 N.C. 179, 69 S.E.2d 244 (1952).

**Procedure Cannot Be Invoked against Alcoholic Control Board.**—It was never intended that the procedure here invoked to abate a nuisance should be applied against the alcoholic control board set up under

color of legislative authority, or against one who rents a building to such a board for the purpose of operating a liquor control store. *State v. Lancaster*, 228 N.C. 157, 44 S.E.2d 733 (1947).

**The proceeding by a citizen in the name of the State for injunction,** the closing of a place of business and the seizure and sale of the personal property used therewith,



must be based upon allegation and proof of one or more of the specific acts denounced by § 19-1. *State v. Alverson*, 225 N.C. 29, 33 S.E.2d 135 (1945).

**Allegation of Direct Injury to Citizen Bringing Action Not Required.** — While ordinarily a resident and citizen may not enjoin public officials from putting into effect the provisions of a legislative enactment on the ground that the act is unconstitutional unless he alleges and proves that he will suffer direct injury, such allegation is not necessary in an action in the name of the State under this section to enjoin the maintenance of a gambling nuisance. *State v. Carolina-Virginia Racing Ass'n*, 239 N.C. 591, 80 S.E.2d 638 (1954).

**Evidence Supporting Abatement.** — The evidence disclosed that defendant operated a tourist camp with filling station, dining room and dance hall in front, and cabins in the rear, that the camp was on highway in a thickly settled rural community, that whiskey and contraceptives were sold, that drunken men and women were seen nightly at the place, and seen to go in the cabins in pairs and stay for a short time, that the community was constantly awakened at night by loud and boisterous conduct and profanity, that fighting occurred between

drunken men and women, with many of both sexes nude or indecently clad, and that the general reputation of the place was bad, is held amply sufficient to be submitted to the jury upon the issue of whether the place constituted a nuisance against public morals as defined by § 19-1, and to support a judgment for its abatement in accordance with this section in an action brought by the solicitor as relator. *Carpenter v. Boyles*, 213 N.C. 432, 196 S.E. 850 (1938).

**Lease Is Made in Contemplation of Section.**—A lease contract will be held to have been made in contemplation of the statute, in effect at the time of the execution of the lease, providing for the abatement of nuisance against public morals, and the lessor is subject to the rights of the State to padlock the premises in accordance with the statute if they are used in operating a nuisance as defined by the act. *Barker v. Palmer*, 217 N.C. 519, 8 S.E.2d 610 (1940).

**Applied in** *State v. Flowers*, 247 N.C. 558, 101 S.E.2d 320 (1958); *State ex rel. Morris v. Shinn*, 262 N.C. 88, 136 S.E.2d 244 (1964).

**Cited in** *Calcutt v. McGeachy*, 213 N.C. 1, 195 S.E. 49 (1938); *State v. Carolina Racing Ass'n*, 241 N.C. 80, 84 S.E.2d 390 (1954).

**§ 19-3. When triable; evidence; dismissal of complaint.**—The action when brought shall be triable at the first term of court after service of the summons has been made, and in such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reason why the action should be dismissed, and the dismissal approved by the city prosecuting attorney, or solicitor, in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, he may direct the city prosecuting attorney, or the solicitor, to prosecute said action to judgment; and if the action continued more than one term of court, any citizen of the county, or the county attorney, may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen, and the court finds there was no reasonable ground or cause of said action, the costs may be taxed to such citizen. (Pub. Loc. 1913, c. 761, s. 27; 1919, c. 288; C. S., s. 3182.)

**Cross Reference.**—As to certain evidence relative to keeping disorderly houses admissible in criminal proceedings, see § 14-188.

**Evidence of the general reputation of**

the place in question is competent in an action to abate a public nuisance. *Carpenter v. Boyles*, 213 N.C. 432, 196 S.E. 850 (1938).

**§ 19-4. Violation of injunction; punishment.**—In case of the violation of any injunction granted under the provisions of this chapter, the court, or, in vacation, a judge thereof, may summarily try and punish the offender. A party found guilty of contempt under the provisions of this section shall be punished by a fine of not less than two hundred or more than one thousand dollars, or by imprisonment in the county jail not less than three or more than six months, or

by both fine and imprisonment. (Pub. Loc. 1913, c. 761, s. 28; 1919, c. 288; C. S., s. 3183.)

Cited in *Carpenter v. Boyles*, 213 N.C. 432, 196 S.E. 850 (1938).

**§ 19-5. Order abating nuisance; what it shall contain.**—If the existence of the nuisance be established in an action as provided in this chapter, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the cause, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released. If any person shall break and enter, or use said building, erection, or place so directed to be closed, he shall be punished as for contempt, as provided in the preceding section [§ 19-4]. For moving and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution; and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court. (Pub. Loc. 1913, c. 761, s. 29; 1919, c. 288; C. S., s. 3184.)

**Local Modification.** — McDowell: 1959, c. 590, s. 2.

**Fishing in nuisances** when prohibited by law is a public nuisance and the General Assembly has the power to authorize a prompt abatement of the nuisance by seizure and sale of the nets, subject to the right of their owner to contest the fact of his violation of the law by a proceeding in the nature of claim and delivery, or by injunction to prevent sale, or by an action to recover the proceeds of sale plus damages. *Daniels v. Homer*, 139 N.C. 219, 51 S.E. 992 (1905).

**Proceeding Is In Personam.**—A proceeding to abate a nuisance against the public morals is not a proceeding in rem against the property itself, but is in personam, and the provisions of the statute for padlocking the premises and for the sale of chattels used in connection with the operation of the nuisance, being more than sufficient for the abatement of the nuisance, are penalties prescribed by law for its violation, and therefore innocent lessors of the premises or owners or mortgagees of chattels which do not constitute a nuisance per se may not be deprived of their property rights unless they have actual or constructive notice that the property is used in the operation of the nuisance, and they have the right to have this issue determined by the verdict of a jury. *Sinclair v. Croom*, 217 N.C. 526, 8 S.E.2d 834 (1940).

Actions as authorized by this chapter for the abatement of nuisances are not in rem but in personam. *State ex rel. Bowman v. Malloy*, 264 N.C. 396, 141 S.E.2d 796 (1965).

**Innocent Mortgagee May Recover Property before Sale.**—An innocent mortgagee without knowledge that the property was being used by the mortgagor in operating a nuisance contrary to law and in violation of provisions in the conditional sales contract, may institute action to recover the property after it has been seized by the sheriff but before it has been sold under this section. *Habit v. Stephenson*, 217 N.C. 447, 8 S.E.2d 245 (1940).

**Lessors Must Have Knowledge before Personal Judgment Can Be Rendered.**—In an action to abate a nuisance against public morals under this chapter, lessors of the property are entitled to the submission of an issue as to whether they knew the lessee was operating a public nuisance thereon before personal judgment is rendered against lessors taxing them with the cost and padlocking the premises, such personal judgment against them being justified only if they knew or, by the exercise of due diligence, should have known of the maintenance of the nuisance. *Barker v. Palmer*, 217 N.C. 519, 8 S.E.2d 610 (1940).

**As Must Conditional Seller.**—Intervener sold a cash register under a conditional sales contract and same, together with other chattels of the purchaser, was seized for sale upon the determination that the purchaser was using it in the maintenance of a nuisance against public morals. Upon the facts agreed intervenor had no actual or constructive knowledge that the cash register was used in the maintenance of a nuisance. Only the equity of the purchaser could be condemned for sale under the statute and the intervenor may be charged with

no part of the cost. *Sinclair v. Croom*, 217 N.C. 526, 8 S.E.2d 834 (1940).

**Restraining Sale of Part of Personalty.**—

Where judgment directing the sale of personal property used in the operation of a nuisance is entered in a proceeding instituted by the solicitor, the complaint in an independent action thereafter instituted against the sheriff alone by the defendant in the former proceeding to restrain the sale of certain of the personalty on the ground that it was not used in the operation of the nuisance cannot be treated as a motion in the cause, since the plaintiff in the former action is not a party. *Humphrey v. Churchill*, 217 N.C. 530, 8 S.E.2d 810 (1940).

In a proceeding under this chapter, judgment was entered upon determination that the defendant therein was operating a nuisance against public morals, directing that the personal property of defendant used in the operation of the nuisance be sold in ac-

cordance with this section. Thereafter the defendant in that proceeding instituted this action against the sheriff to restrain the sale of certain of the personal property upon allegations that the property specified had not been used in the operation of the nuisance and that the sheriff was about to sell it under the prior judgment. There was neither allegation nor contention that the execution was void. The temporary restraining order was properly dissolved, the proper remedy being by motion in the cause and not by independent action to restrain the sheriff from selling the chattels as directed by the prior judgment. *Humphrey v. Churchill*, 217 N.C. 530, 8 S.E.2d 810 (1940).

**Applied in** *State ex rel. Morris v. Shinn*, 262 N.C. 88, 136 S.E.2d 244 (1964).

**Stated in** *State v. Carolina Racing Ass'n*, 241 N.C. 80, 84 S.E.2d 390 (1954).

**Cited in** *Carpenter v. Boyles*, 213 N.C. 432, 196 S.E. 850 (1938).

**§ 19-6. Application of proceeds of sale.**—The proceeds of the sale of the personal property as provided in § 19-5 shall be applied in the payment of the costs of action and abatement, and the balance, if any, shall be paid to the defendant. (Pub. Loc. 1913, c. 761, s. 30; 1919, c. 288; C. S., s. 3185.)

**Local Modification.** — *McDowell*: 1959, c. 590, s. 3.

**Cited in** *Carpenter v. Boyles*, 213 N.C.

432, 196 S.E. 850 (1938); *State v. Carolina Racing Ass'n*, 241 N.C. 80, 84 S.E.2d 390 (1954).

**§ 19-7. How order of abatement may be canceled.**—If the owner appears and pays all cost of the proceeding and files a bond, with sureties to be approved by the clerk, in the full value of the property, to be ascertained by the court, or, in vacation, by the clerk of the superior court, conditioned that he will immediately abate said nuisance, and prevent the same from being established or kept within a period of one year thereafter, the court may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to said owner, and said order of abatement canceled so far as same may relate to said property; and if the proceeding be a civil action, and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability to which it may be subject by law. (Pub. Loc. 1913, c. 761, s. 31; 1919, c. 288; C. S., s. 3186.)

**Stated in** *State v. Carolina Racing Ass'n*, 241 N.C. 80, 84 S.E.2d 390 (1954).

**Cited in** *Carpenter v. Boyles*, 213 N.C. 432, 196 S.E. 850 (1938).

**§ 19-8. Attorney's fees may be taxed as costs.**—The court shall tax as part of the cost in any action brought hereunder such fee for the attorney prosecuting the action or proceedings as may in the court's discretion be reasonable remuneration for the services performed by such attorney. (Pub. Loc. 1913, c. 761, s. 32; 1919, c. 288; C. S., s. 3187.)

**Local Modification.** — *McDowell*: 1959, c. 590, s. 4.

**Cited in** *Carpenter v. Boyles*, 213 N.C.

432, 196 S.E. 850 (1938); *State v. Murphy*, 235 N.C. 503, 70 S.E.2d 498 (1952).



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- 20-323. Licenses for instructors necessary; regulations as to requirements.
- 20-324. Expiration and renewal of licenses; fees.
- 20-325. Cancellation, suspension, revocation, and refusal to issue or renew licenses.
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## ARTICLE 1.

### *Department of Motor Vehicles.*

#### § 20-1. Department of Motor Vehicles created; powers and duties.

—A department of the government of this State, to be known as the Department

of Motor Vehicles, is hereby created. It is the intent and purpose of this article, and it shall be liberally construed to accomplish that purpose, to transfer and consolidate under one administrative head in the Department of Motor Vehicles agencies now operated under the Department of Revenue and dealing with the subject of the regulation of motor vehicular traffic, whether such activities are at present handled directly by the Commissioner of Revenue or by the Motor Vehicle Bureau, the Auto Theft Bureau, the Division of Highway Safety, the major of the State Highway Patrol, the officials handling the Uniform Driver's License Act; and the Department of Motor Vehicles shall succeed to and is hereby vested with all the powers, duties and jurisdiction now vested by law in any of said agencies; provided, however, all powers, duties and functions relating to the collection of motor fuel taxes, and the collection of the gasoline and oil inspection taxes, shall continue to be vested in and exercised by the Commissioner of Revenue, and wherever it is now provided by law that reports shall be filed with the Commissioner or Department of Revenue as a basis for collecting the motor fuel or gasoline and oil inspection taxes, or enforcing any of the laws regarding the motor fuel or gasoline and oil inspection taxes, such reports shall continue to be made to the Department of Revenue and the Commissioner of Motor Vehicles shall make available to the Commissioner of Revenue all information from the files of the Department of Motor Vehicles which the Commissioner of Revenue may request to enable him to better enforce the law with respect to the collection of such taxes: Provided, further, nothing in this article shall deprive the Utilities Commissioner of any of the duties or powers now vested in him with regard to the regulation of motor vehicle carriers. (1941, c. 36, s. 1; 1949, c. 1167.)

**Cross Reference.** — As to North Carolina Traffic Safety Authority, see §§ 143-392 to 143-395.

**Editor's Note.**—For comment on the 1941 act, see 19 N.C.L. Rev. 444.

**For acts relating to parking meters** not affected by this chapter, see Session Laws

1947, c. 54 (city of Shelby); c. 66 (town of Laurinburg); c. 675 (city of Statesville); c. 735 (town of Mooresville); c. 1035 (Cabarrus County). And see Session Laws 1949, c. 573, relating to city of Statesville.

**§ 20-2. Commissioner of Motor Vehicles.** — The Department of Motor Vehicles shall be under control of an executive officer to be designated as the Commissioner of Motor Vehicles, who shall be appointed by the Governor and be responsible directly to the Governor and subject to removal by the Governor at his discretion and without requirement of the assignment of any cause. The Commissioner shall be paid an annual salary to be fixed by the Governor, with the approval of the Advisory Budget Commission, payable in monthly installments, and shall likewise be allowed his traveling expenses when away from Raleigh on official business.

In any action, proceeding, or matter of any kind, to which the Commissioner of Motor Vehicles is a party or in which he may have an interest, all pleadings, legal notices, proofs of claim, warrants for collection, certificates of tax liability, executions, and other legal documents may be signed and verified on behalf of the Commissioner by the assistant commissioner or by any director or assistant director of any division of the Department of Motor Vehicles or by any other agent or employee of the Department so authorized by the Commissioner of Motor Vehicles. (1941, c. 36, s. 2; 1945, c. 527; 1955, c. 472.)

**§ 20-3. Organization of Department.**—The Commissioner shall organize the Department in such manner as he may deem necessary properly to segregate and conduct the work of the Department; but the work of the Department is hereby divided into at least two divisions, to be known respectively as the Division of Registration and the Division of Highway Safety and Patrol. The Commissioner shall, as soon as practicable after appointment, prepare a general plan for the organization of the Department, which plan shall not be put into effect

until approved by the Governor and the Advisory Budget Commission, subject to such changes as may be recommended by the Governor and approved by the Advisory Budget Commission. The plan of organization herein provided for may increase or decrease the number of persons now assigned to any of the activities transferred to this Department, and the titles may be changed. (1941, c. 36, s. 3.)

**§ 20-3.1. Purchase and use of airplanes.**—The Department of Motor Vehicles shall not purchase or use additional airplanes without the express authorization of the General Assembly. (1963, c. 911, s. 1½.)

**§ 20-4. Clarification of conflicts as to transfer of functions.**—In the event that there shall arise any conflict as to the transfer of any functions from the Department of Revenue to the Department of Motor Vehicles, the Governor of the State is hereby authorized to issue an executive order clarifying and making certain the issue thus arising. (1941, c. 36, s. 5.)

#### ARTICLE 1A.

##### *Reciprocity Agreements as to Registration and Licensing.*

**§ 20-4.1. Declaration of policy.**—It is the policy of this State to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal registration agreements, arrangements and declarations with other states, provinces, territories and countries with respect to vehicles registered in this and such other states, provinces, territories and countries thus contributing to the economic and social development and growth of this State. (1961, c. 642, s. 1.)

**§ 20-4.2. Definitions.**—As used in this article:

- (1) "Commercial vehicle" means any vehicle which is operated interstate in furtherance of any commercial enterprise.
- (2) "Commissioner" means the Commissioner of Motor Vehicles of North Carolina.
- (3) "Department" means the Department of Motor Vehicles of North Carolina.
- (4) "Jurisdiction" means and includes a state, district, territory or possession of the United States, a foreign country and a state or province of a foreign country.
- (5) "Properly registered," as applied to place of registration, means:
  - a. The jurisdiction where the person registering the vehicle has his legal residence, or
  - b. In the case of a commercial vehicle, including a leased vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from such place of business, and, the vehicle has been assigned to such place of business, or
  - c. In the case of a commercial vehicle, including leased vehicles, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.
  - d. In case of doubt or dispute as to the proper place of registration of a vehicle, the Department shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected. (1961, c. 642, s. 1.)



**§ 20-4.3. Commissioner may make reciprocity agreements, arrangements or declarations.**—The Commissioner of Motor Vehicles shall have the authority to execute or make agreements, arrangements or declarations to carry out the provisions of this article. (1961, c. 642, s. 1.)

**§ 20-4.4. Authority for reciprocity agreements; provisions; reciprocity standards.**—(a) The Commissioner may enter into an agreement or arrangement with the duly authorized representatives of another jurisdiction, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdiction and for which evidence of compliance is supplied, benefits, privileges and exemptions from the payment, wholly or partially, of any taxes, fees, or other charges imposed upon such vehicles or owners with respect to the operation or ownership of such vehicles under the laws of this State. Such an agreement or arrangement shall provide that vehicles properly registered or licensed in this State when operated upon highways of such other jurisdiction shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such jurisdiction when operated in this State. Each such agreement or arrangement shall, in the judgment of the Commissioner, be in the best interest of this State and the citizens thereof and shall be fair and equitable to this State and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this State from the uninterrupted flow of commerce.

(b) When the Commissioner enters into a reciprocal registration agreement or arrangement with another jurisdiction which has a motor vehicle tax, license or fee which is not subject to waiver by a reciprocity agreement, the Commissioner is empowered and authorized to provide as a condition of the agreement or arrangement that owners of vehicles licensed in such other jurisdiction shall pay some equalizing tax or fee to the Department. The failure of any owner or operator of a vehicle to pay the taxes or fees provided in the agreement or arrangement shall prohibit them from receiving any benefits therefrom and they shall be required to register their vehicles and pay taxes as if there was no agreement or arrangement. (1961, c. 642, s. 1.)

**§ 20-4.5. Base state registration reciprocity.**—An agreement or arrangement entered into, or a declaration issued under the authority of this article may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in some other state; and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction. (1961, c. 642, s. 1.)

**§ 20-4.6. Declarations of extent of reciprocity, when.**—In the absence of an agreement or arrangement with another jurisdiction, the Commissioner may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdiction, or to the owners of such vehicles, which shall, in the judgment of the Commissioner, be in the best interest of this State and the citizens thereof and which shall be fair and equitable to this State and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this State from the uninterrupted flow of commerce. (1961, c. 642, s. 1.)

**§ 20-4.7. Extension of reciprocal privileges to lessees authorized.**—An agreement or arrangement entered into, or a declaration issued under the authority of this article, may contain provisions under which a leased vehicle

properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration. (1961, c. 642, s. 1.)

**§ 20-4.8. Automatic reciprocity, when.**—On and after July 1, 1961, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this article, any vehicle properly registered or licensed in such other jurisdiction and for which evidence of compliance supplied shall receive, when operated in this State, the same exemptions, benefits and privileges granted by such other jurisdiction to vehicles properly registered in this State. Reciprocity extended under this section shall apply to commercial vehicles only when engaged exclusively in interstate operations. (1961, c. 642, s. 1.)

**§ 20-4.9. Suspension of reciprocity benefits.**—Agreements, arrangements or declarations made under the authority of this article may include provisions authorizing the Department to suspend or cancel the exemptions, benefits or privileges granted thereunder to a vehicle which is in violation of any of the conditions or terms of such agreements, arrangements or declarations or is in violation of the laws of this State relating to motor vehicles or rules and regulations lawfully promulgated thereunder. (1961, c. 642, s. 1.)

**§ 20-4.10. Agreements to be written, filed and available for distribution.**—All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed in the office of the Commissioner. Copies thereof shall be made available by the Commissioner upon request and upon payment of a fee therefor in an amount necessary to defray the costs of reproduction thereof. (1961, c. 642, s. 1.)

**§ 20-4.11. Reciprocity agreements in effect at time of article.**—All reciprocity registration agreements, arrangements and declarations relating to vehicles in force and effect July 1, 1961, shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements. (1961, c. 642, s. 1.)

**§ 20-4.12. Article part of and supplemental to motor vehicle registration law.**—This article shall be, and construed as, a part of and supplemental to the motor vehicle registration law of this State. (1961, c. 642, s. 1.)

## ARTICLE 2.

### *Uniform Driver's License Act.*

**§ 20-5. Title of article.**—This article may be cited as the Uniform Driver's License Act. (1935, c. 52, s. 31.)

**Legislative Purpose.** — This article was designed under the police power in furtherance of the safety of the users of the State's highways. *Harrell v. Scheidt*, 243 N.C. 735, 92 S.E.2d 182 (1956).

**And Authority.**—The General Assembly has full authority to prescribe the conditions upon which licenses to operate automobiles are issued, and to designate the agency through which, and the conditions upon which licenses, when issued shall be suspended or revoked. *Honeycutt v.*

*Scheidt*, 254 N.C. 607, 119 S.E.2d 777 (1961).

**Department Given Exclusive Power to Issue, Suspend and Revoke Licenses.**—This article vests exclusively in the State Department of Motor Vehicles the issuance, suspension and revocation of licenses to operate motor vehicles. *Honeycutt v. Scheidt*, 254 N.C. 607, 119 S.E.2d 777 (1961); *Gibson v. Scheidt*, 259 N.C. 339, 130 S.E.2d 679 (1963).

**§ 20-6. Definitions.**—Terms used in this article shall be construed as follows, unless another meaning is clearly apparent from the language or context or

unless such construction is inconsistent with the manifest intention of the legislature.

"Chauffeur" shall mean every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives any motor vehicle when in use for the transportation of persons or property for compensation and the driver, other than the owner of a private hauler, of any property hauling vehicle or combination of vehicles licensed for more than 26,000 pounds gross weight and the driver of any passenger carrying vehicle of over nine (9) passenger capacity except the driver of a church, or a school bus who holds a valid operator's license.

"Department" shall mean the Department of Motor Vehicles.

"Highway" shall include any trunk line highway, State aid road or other public highway, road, street, avenue, alley, driveway, parkway, or place, under the control of the State or any political subdivision thereof, dedicated, appropriated or opened to public travel or other use.

"Motor vehicle" shall mean every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle.

"Nonresident" shall mean any person whose legal residence is in some state other than North Carolina or in a foreign country.

"Operator" shall mean any person other than a "chauffeur" who shall operate a motor vehicle or who shall be in the driver's seat of a motor vehicle when the engine is running or who shall steer or direct the course of a motor vehicle which is being towed or pushed by another motor vehicle.

"Person" shall include any individual, corporation, association, co-partnership, company, firm or other aggregation of individuals.

"Vehicle" shall include any device suitable for use on the highways for the conveyance, drawing or other transportation of persons or property, except those propelled or drawn by muscular power or those used exclusively upon tracks.

As applied to operators' and chauffeurs' licenses issued under this article, the words:

"Cancelled" shall mean that a license which was issued through error or fraud has been declared void and terminated. A new license may be obtained only as permitted in this article.

"Revocation" shall mean that the licensee's privilege to drive a vehicle is terminated for the period stated in the order of revocation.

"Suspension" shall mean the licensee's privilege to drive a vehicle is temporarily withdrawn. (1935, c. 52, s. 1; 1941, c. 36; 1943, c. 787, s. 1; 1951, c. 1202, s. 1; 1953, cc. 683, 841; 1955, c. 1187, s. 1; 1957, c. 997; 1963, c. 160.)

**Editor's Note.**—The 1963 amendment substituted "26,000" for "20,000" in the paragraph defining "chauffeur." v. Fidelity & Cas. Co., 241 N.C. 666, 86 S.E.2d 433 (1955).

For brief comment on the 1951 and 1953 amendments of this article, see 29 N.C.L. Rev. 405; 31 N.C.L. Rev. 412 (1953). **Applied in** State v. Moore, 247 N.C. 368, 101 S.E.2d 26 (1957).

**Quoted in** Levy v. Carolina Aluminum Co., 232 N.C. 158, 59 S.E.2d 632 (1950); Morrissey v. Crabtree, 143 F. Supp. 105 (M.D.N.C. 1956).

**Farm tractors are not to be considered motor vehicles** within the provisions of the Uniform Driver's License Act. Brown

**§ 20-7. Operators' and chauffeurs' licenses; expiration; examinations; fees.**—(a) Except as otherwise provided in § 20-8, no person shall act as or operate a motor vehicle over any highway in this State as a chauffeur unless such person has first been licensed as a chauffeur by the Department under the provisions of this article. Except as otherwise provided in § 20-8, no person shall operate a motor vehicle over any highway in this State unless such person



has first been licensed as an operator or a chauffeur by the Department under the provisions of this article.

(b) Every application for an operator's or chauffeur's license shall be made upon the approved form furnished by the Department.

(c) No person shall hereafter be issued an operator's license until it is determined that such person is physically and mentally capable of safely operating motor vehicles over the highways of the State. In determining whether or not a person is physically and mentally capable of safely operating motor vehicles over the highways of the State, the Department shall require such person to demonstrate his capability by passing an examination, which may include road tests, oral and in the case of literate applicants written tests, and tests of vision, as the Department may require. Provided, however, that persons sixty (60) years of age and over, when being examined as herein provided, shall not be required to parallel park a motor vehicle as part of any such examination.

(d) The Department shall cause each person who has heretofore been issued an operator's license to be examined or re-examined, as the case may be, to determine whether or not such person is physically and mentally capable of safely operating motor vehicles over the highways of the State. Those persons found, as a result of such examination or re-examination, to be capable of safely operating motor vehicles over the highways of the State shall be reissued operators' licenses; and those persons found to be incapable of safely operating motor vehicles over the highways of the State shall not be reissued operators' licenses. The examination required by this subsection may include such road tests, oral and in the case of literate applicants written tests, and tests of vision, as the Department may require. The Department may once reissue operators' licenses without examination to licensed operators who have passed an operator's examination given by the Department subsequent to July 1st, 1945, and prior to July 1st, 1947. Provided, however, that persons sixty (60) years of age and over, when being examined as herein provided, shall not be required to parallel park a motor vehicle as part of any such examination.

(e) The Department is hereby authorized to grant unlimited licenses or licenses containing such limitations as it may deem advisable. Such limitation or limitations shall be noted on the face of the license, and it shall be unlawful for the holder of a license so limited to operate a motor vehicle without complying with the limitations, and the operation of a motor vehicle without complying with the limitations by a person holding a license with such limitations shall be the equivalent of operating a motor vehicle without a chauffeur's or operator's license. If any applicant shall suffer from any physical defect or disease which affects his or her operation of a motor vehicle, the Department may require to be filed with it a certificate of such applicant's condition signed by some medical authority of the applicant's community designated by the Department. This certificate shall in all cases be treated as confidential. Nothing in this subsection shall be construed to prevent the Department from refusing to issue a license, either limited or unlimited, to any person deemed to be incapable of operating a motor vehicle with safety to himself and to the public: Provided, that nothing herein shall prohibit deaf persons from operating motor vehicles who in every other way meet the requirements of this section.

(f) The operators' licenses issued under this section shall automatically expire on the birthday of the licensee in the fourth year following the year of issuance; and no new license shall be issued to any operator after the expiration of his license until such operator has again passed the examination specified in this section. Any operator may at any time within sixty days prior to the expiration of his license apply for a new license and if the applicant meets the requirements of this article, the Department shall issue a new license to him. A new license issued within sixty days prior to the expiration of an applicant's old license or

within twelve months thereafter shall automatically expire four years from the date of the expiration of the applicant's old license.

Provided, that any person serving in the armed forces of the United States on active duty and holding a valid operator's license properly issued under this section and stationed outside of the State of North Carolina may renew his license by making application to the Department by mail. In such cases, the Department may waive the examination ordinarily required for the renewal of an operator's license, and may require in lieu thereof such statement as to the physical condition of the applicant and his ability to operate a motor vehicle safely as it may deem appropriate. Provided further, that the foregoing proviso shall not affect the validity of licenses extended under chapter 1284 of the Session Laws of 1953, but that all such licenses continued in force by the provisions of chapter 1284 of the Session Laws of 1953 shall expire on July 1, 1955.

(g) Every chauffeur's license issued under this section shall automatically expire on the birthday of the licensee in the second year following the year of issuance and chauffeurs shall renew their licenses every two (2) years after an examination which may include road tests, oral and, in the case of literate applicants, written tests, and tests of vision as the Department may require: Provided, that the Commissioner may, in proper cases, waive the examination required by this subsection: Provided, further, that no chauffeur's license issued hereunder shall expire in less than six months from the date of issuance.

(h) Upon receipt of information that the physical or mental condition of any person has changed since his or her examination for an operator's or chauffeur's license and before a new examination is required by this section, the Department may, after ten (10) days' written notice, require such person to take another examination to determine his or her capability to operate safely motor vehicles over the highways of the State. If such person is found to be capable of safely operating vehicles over the highways of the State, license shall be reissued to him or her and no fee shall be collected by the Department for such examination and reissuance of license. If such person is found to be incapable of safely operating vehicles over the highways of the State, no license shall be issued or reissued to him or her unless such person shall subsequently pass an examination given by the Department.

(i) The fee for issuance or reissuance of an operator's license shall be two dollars and fifty cents (\$2.50) and the fee for issuance or reissuance of a chauffeur's license shall be four dollars (\$4.00).

(j) The fees collected under this section and § 20-14 shall be placed in a special fund to be designated the "Operators' and Chauffeurs' License Fund" and shall be used under the direction and supervision of the Assistant Director of the Budget for the administration of this section.

(k) Any person operating a motor vehicle in violation of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided in this section.

(l) Any person who, except for lack of instruction in operating a motor vehicle would be qualified to obtain an operator's license under this article, may apply for a temporary learner's permit, and the Department shall issue such permit, entitling the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways for a period of thirty (30) days. Any such learner's permit may be renewed, or a new permit issued for an additional period of thirty (30) days. Such person must, while operating a motor vehicle over the highways, be accompanied by a licensed operator or chauffeur who is actually occupying a seat beside the driver.

(l-1) The Department upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to an applicant who is enrolled in a driver training program as provided for in G.S. 20-88.1 even though the applicant has not yet reached the legal age to be eligible

for an operator's license. Such instruction permit shall entitle the permittee when he has such permit in his immediate possession to operate a motor vehicle subject to the restrictions imposed by the Department. The restrictions which the Department may impose on such permits include but are not limited to restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee.

(m) Every operator's or chauffeur's license issued by the Department shall bear thereon the distinguishing number assigned to the licensee and shall contain the name, age, residence address and a brief description of the licensee, who, for the purpose of identification and as a condition precedent to the validity of the license, immediately upon receipt thereof, shall endorse his or her regular signature in ink upon the same in the space provided for that purpose unless a facsimile of his or her signature appears thereon. Such license shall be carried by the licensee at all times while engaged in the operation of a motor vehicle. However, no person charged with failing to so carry such license shall be convicted, if he produces in court an operator's or chauffeur's license theretofore issued to him and valid at the time of his arrest.

(n) Any person convicted of violating any provision of this section shall be guilty of a misdemeanor and punished in the discretion of the court: Provided, that no person shall be convicted of operating a motor vehicle without an operator's or chauffeur's license if he produces in court at the time of his trial upon such charge an expired operator's or chauffeur's license and a renewal operator's or chauffeur's license issued to him within thirty (30) days of the expiration date of the expired license and which would have been a defense to the charge had it been issued prior to the time of the alleged offense. (1935, c. 52, s. 2; 1943, c. 649, s. 1; c. 787, s. 1; 1947, c. 1067, s. 10; 1949, c. 583, ss. 9, 10; c. 826, ss. 1, 2; 1951, c. 542, ss. 1, 2; c. 1196, ss. 1-3; 1953, cc. 839, 1284, 1311; 1955, c. 1187, ss. 2-6; 1957, c. 1225; 1963, cc. 754, 1007, 1022; 1965, c. 410, s. 5.)

**Editor's Note.**—The first 1963 amendment rewrote subsection (n). The second 1963 amendment added the provisos as to parallel parking to subsections (c) and (d). The third 1963 amendment rewrote subsection (g) to provide for expiration of chauffeurs' licenses every second year instead of annually. It also increased the fee for a chauffeur's license in subsection (i) from \$2.00 to \$4.00.

The 1965 amendment substituted "as provided for in G.S. 20-88.1" for "approved by the Department" in the first sentence of subsection (1-1).

For comment on the 1953 amendments, see 31 N.C.L. Rev. 412 (1953).

**Driving without a License Is Negligence Per Se.**—Under this section it is negligence per se for one to drive a motor vehicle without a license, but such negligence must be the proximate cause of injury in order to be actionable. *Hoke v. Atlantic Greyhound Corp.*, 226 N.C. 692, 40 S.E.2d 345 (1946).

**Cited in** *State v. Payne*, 213 N.C. 719, 197 S.E. 573 (1938); *Brown v. Fidelity & Cas. Co.*, 241 N.C. 666, 86 S.E.2d 433 (1955); *Beaver v. Scheidt*, 251 N.C. 671, 111 S.E.2d 881 (1960); *Parks v. Washington*, 255 N.C. 478, 122 S.E.2d 70 (1961).

**§ 20-8. Persons exempt from license.**—The following are exempt from license hereunder:

- (1) Any person while operating a motor vehicle the property of, and in the service of the Army, Navy or Marine Corps of the United States. This shall not be construed to exempt any chauffeurs or operators of the United States Civilian Conservation Corps motor vehicles;
- (2) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway;
- (3) A nonresident who is at least sixteen (16) years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country, may operate a motor vehicle in this State only as an operator;



- (4) A nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this State either as an operator or chauffeur;
- (5) Any nonresident who is at least eighteen (18) years of age, whose home state or country does not require the licensing of operators may operate a motor vehicle as an operator only, for a period of not more than ninety (90) days in any calendar year if the motor vehicle so operated is duly registered in the home state or country of such nonresident;
- (6) Any nonresident who is at least eighteen (18) years of age, whose home state or country does not require the licensing of chauffeurs may operate a motor vehicle as a chauffeur for a period of not more than ten days in any calendar year if the motor vehicle so operated is duly registered in the home state or country of such nonresident. (1935, c. 52, s. 3; 1963, c. 1175.)

**Editor's Note.**—The 1963 amendment deleted "except any such person must be licensed as a chauffeur hereunder before accepting employment as a chauffeur from a resident of this State" at the end of subdivision (4).

**Quoted**, as to subdivision (2), in *Brown v. Fidelity & Cas. Co.*, 241 N.C. 666, 86 S.E.2d 433 (1955).

**§ 20-9. What persons shall not be licensed.** — (a) An operator's license shall not be issued to any person under the age of sixteen (16) years, and no chauffeur's license shall be issued to any person under the age of eighteen (18) years.

(b) The Department shall not issue an operator's or chauffeur's license to any person whose license, either as operator or chauffeur, has been suspended, during the period for which license was suspended; nor to any person whose license, either as operator or chauffeur, has been revoked under the provisions of this article, until the expiration of one year after such license was revoked.

(c) The Department shall not issue an operator's or chauffeur's license to any person who is an habitual drunkard or is an habitual user of narcotic drugs or barbiturates, whether or not such use be in accordance with the prescription of a physician.

(d) No operator's or chauffeur's license shall be issued to any applicant who has been previously adjudged insane or an idiot, imbecile, grand mal epileptic, or feeble-minded, and who has not at the time of such application been restored to competency by judicial decree or released from a hospital for the insane or feeble-minded upon a certificate of the superintendent that such person is competent, nor then unless the Department is satisfied that such person is competent to operate a motor vehicle with safety to persons and property.

(e) The Department shall not issue an operator's or chauffeur's license to any person when in the opinion of the Department such person is afflicted with or suffering from such physical or mental disability or disease as will serve to prevent such person from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways, nor shall a license be issued to any person who is unable to understand highway warnings or direction signs.

(f) The Department shall not issue an operator's or chauffeur's license to any person whose license or driving privilege is in a state of suspension or revocation in any jurisdiction, if the acts or things upon which the suspension or revocation in such other jurisdiction was based would constitute lawful grounds for suspension or revocation in this State had those acts or things been done

or committed in this State. (1935, c. 52, s. 4; 1951, c. 542, s. 3; 1953, c. 773; 1955, c. 1187, s. 7.)

**Cited in** *Hoke v. Atlantic Greyhound Corp.*, 226 N.C. 692, 40 S.E.2d 345 (1946).

**§ 20-10. Age limits for drivers of public passenger-carrying vehicles.** — It shall be unlawful for any person, whether licensed under this article or not, who is under the age of twenty-one years to drive a motor vehicle while in used as a public passenger-carrying vehicle.

No person fourteen years of age or under, whether licensed under this article or not, shall operate any road machine, farm tractor or motor driven implement of husbandry on any highway within this State. Provided any person may operate a road machine, farm tractor, or motor driven implement of husbandry upon a highway adjacent to or running in front of the land upon which such person lives when said person is actually engaged in farming operations. (1935, c. 52, s. 5; 1951, c. 764.)

**Local Modification.**—Cumberland: 1965, c. 1152, s. 3.

**§ 20-11. Application of minors.**—(a) The Department shall not grant the application of any minor between the ages of sixteen (16) and eighteen (18) years for an operator's license or a learner's permit unless such application is signed both by the applicant and by the parent, guardian, husband, wife or employer of the applicant, or, if the applicant has no parent, guardian, husband, wife or employer residing in this State, by some other responsible adult person. It shall be unlawful for any person to sign the application of a minor under the provisions of this section when such application misstates the age of the minor and any person knowingly violating this provision shall be guilty of a misdemeanor.

The Department shall not grant the application of any minor between the ages of sixteen (16) and eighteen (18) years for an operator's license unless such minor presents evidence of having satisfactorily completed the driver training and safety education courses offered at the public high schools as provided in G.S. 20-88.1.

(b) The Department may grant an application for a temporary learner's permit of any minor under the age of sixteen, who otherwise meets the requirements for licensing under this section, when such application is signed by both the applicant and his or her parent or guardian. Such temporary learner's permit shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways during daylight hours for a period of thirty days or until he becomes sixteen years of age, whichever is the longer period, while such minor is accompanied by a parent or guardian who is licensed under this chapter to operate a motor vehicle and who is actually occupying a seat beside the driver. Provided, however, a learner's permit as herein provided shall be issued only to those applicants who have reached the age of fifteen and one-half years. In the event a minor issued a temporary learner's permit under this subsection operates a motor vehicle in violation of any provision herein, the learner's permit shall be cancelled. (1935, c. 52, s. 6; 1953, c. 355; 1955, c. 1187, s. 8; 1963, c. 968, ss. 2, 2A; 1965, c. 410, s. 3; c. 1171.)

**Editor's Note.**—The 1963 amendment added the former second and third paragraphs.

The first 1965 amendment rewrote the former second and third paragraphs to

constitute the present second paragraph of what is now subsection (a). The second 1965 amendment redesignated the former section as subsection (a) and added subsection (b).

**§ 20-11.1: Repealed by Session Laws 1965, c. 410, s. 4.**

**Editor's Note.**—The repealed section was codified from Session Laws 1963, c. 968, s. 3.

**§ 20 12. Instruction.**—Any licensed operator or chauffeur may instruct a person who is sixteen or more years of age in the operation of a motor vehicle. Any person so instructing another shall be seated as to be within reach of the controls of the motor vehicle and shall be responsible for the operation thereof. (1935, c. 52, s. 7, 1953, c. 356.)

**§ 20-13. Mandatory revocation of license of provisional licensee.**—(a) The operator's license of any person shall be suspended by the Department without preliminary hearing upon notice to the Department of such person's conviction of a motor vehicle moving violation, as specified in subsection (b), committed while such person was still a provisional licensee. A provisional licensee is any licensee who has not attained his eighteenth birthday. A motor vehicle moving violation, as used herein, does not include overloads, over length, over width, over height, illegal parking, carrying concealed weapon, improper plates, improper registration, improper muffler, public drunk within a vehicle, possession of liquor, improper display of license plates or dealer tags, or unlawful display of emblems and insignia.

(b) The basis for departmental action, and the period of suspension, shall be as follows:

- (1) For conviction of a second motor vehicle moving violation, in any twelve-month period, thirty (30) days;
- (2) For conviction of a third such violation, in any twelve-month period, three (3) months;
- (3) For conviction of a fourth such violation, in any twelve-month period, one (1) year;
- (4) For conviction of one such violation in connection with a motor vehicle accident resulting in personal injury or property damage of one hundred dollars (\$100.00) or more, sixty (60) days.

(c) In the event of conviction of two or more motor vehicle moving offenses committed on a single occasion, a licensee shall be charged, for purposes of this section, with only one moving offense.

(d) The suspension provided for in this section shall be in addition to any other remedies which the Department may have against a licensee under other provisions of law; however, when the license of any person is subject to suspension under this section and at the same time is also subject to suspension or revocation under other provisions of law, such suspensions or revocations shall run concurrently.

(e) For the purpose of this section the word "conviction" shall include a plea of guilty or nolo contendere, or a determination of guilty by a jury or by a court, and it includes a forfeiture of bail or collateral deposited to secure appearance in court of the defendant, unless the forfeiture has been vacated. The provisions of this section shall not apply if prayer for judgment is continued upon conviction.

(f) Upon receipt of notice on conviction of a licensee's first motor vehicle moving offense, committed while such licensee was a provisional licensee, the Department shall mail to the licensee at his last known address a letter of warning, but failure of the licensee to receive such letter of warning shall not prevent the suspension of his license under this section.

(g) Operators whose licenses have been suspended under the provisions of this section shall not be required to maintain proof of financial responsibility upon reissuance of the license solely because of suspension pursuant to this section, except as provided under article 13 of this chapter. The registered owner's liability insurance policy shall insure said licensee who is a member of said registered owner's household or anyone who is in lawful possession of said automobile. (1963, c. 968, s. 1; 1965, c. 897.)

**Editor's Note.**—The 1965 amendment added subsection (g).

Former § 20-13, which derived from Public Laws 1935, c. 52, s. 8, and related

to expiration of operators' and chauffeurs' licenses, was repealed by Session Laws 1947, c. 1067, s. 11.



§ 20-14. **Duplicate certificates.** — In the event that an operator's or chauffeur's license issued under the provisions of this article is lost or destroyed, the person to whom the same was issued may, upon payment of a fee of fifty cents (\$.50), obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the Department that such license has been lost or destroyed. (1935, c. 52, s. 9; 1943, c. 649, s. 2.)

§ 20-15. **Authority of Department to cancel license.**—(a) The Department shall have authority to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance thereof hereunder, or that said licensee failed to give the required or correct information in his application, or committed fraud in making such application.

(b) Upon such cancellation, the licensee must surrender the license so cancelled to the Department. (1935, c. 52, s. 10; 1943, c. 649, s. 3.)

§ 20-16. **Authority of Department to suspend license.**—(a) The Department shall have authority to suspend the license of any operator or chauffeur with or without preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

- (1) Has committed an offense for which mandatory revocation of license is required upon conviction;
- (2) Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage, which accident is obviously the result of the negligence of such driver, and where such property damage has not been compensated for;
- (3) Is an habitually reckless or negligent driver of a motor vehicle;
- (4) Is incompetent to drive a motor vehicle;
- (5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated twelve (12) or more points, or eight (8) or more points in the three-year period immediately following the reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;
- (6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;
- (7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;
- (8) Has been convicted of illegal transportation of intoxicating liquors;
- (9) Has, within a period of twelve (12) months, been convicted of two or more charges of speeding in excess of fifty-five (55) and not more than seventy-five (75) miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of fifty-five (55) and not more than seventy-five (75) miles per hour;
- (10) Has been convicted of operating a motor vehicle at a speed in excess of seventy-five (75) miles per hour; or
- (11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator or chauffeur not operate a motor vehicle for a period of time.

(b) Pending an appeal from a conviction of any violation of the motor vehicle laws of this State, no driver's or chauffeur's license shall be suspended by the Department of Motor Vehicles because of such conviction or because of evidence of the commission of the offense for which the conviction has been had.

(c) The Department shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this article as an operator or chauffeur and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign

to the record of such person, as of the date of commission for the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws:

Schedule of Point Values

Passing stopped school bus .....	5
Reckless driving .....	4
Hit and run, property damage only .....	4
Following too close .....	4
Driving on wrong side of road .....	4
Illegal passing .....	4
Running through stop sign .....	3
Speeding in excess of 55 miles per hour .....	3
Failing to yield right of way .....	3
Running through red light .....	3
No operator's license or license expired more than one year .....	3
Failure to stop for siren .....	3
Driving through safety zone .....	3
No liability insurance .....	3
Failure to report accident where such report is required .....	3
All other moving violations .....	2

The [above] provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses:

- Over loads
- Over length
- Over width
- Over height
- Illegal parking
- Carrying concealed weapon
- Improper plates
- Improper registration
- Improper muffler
- Public drunk within a vehicle
- Possession of liquor
- Improper display of license plates or dealers' tags
- Unlawful display of emblems and insignia.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever a licensee accumulates as many as four points hereunder, the Department shall mail a letter of warning to the licensee at his last-known address, but failure to receive such warning letter shall not prevent a suspension under this subsection. Whenever a licensee accumulates as many as seven points, the Department may request the licensee to attend a conference regarding such licensee's driving record. The Department may also afford the licensee who has accumulated as many as seven points an opportunity to attend a driver improvement clinic operated by the Department and, upon the successful completion of the course taught at the clinic, three points shall be deducted from the licensee's

conviction record; provided, that only one such deduction of points shall be made on behalf of any licensee.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than sixty (60) days; the second such suspension shall not exceed six (6) months, and any subsequent suspension shall not exceed one year.

Whenever the operator's or chauffeur's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Department, a period of probation may be substituted for suspension or for any unexpired period of suspension under G.S. 20-16 (a) (5) and this subsection. Such period of probation shall not exceed one year, and any violation of probation during the probation period shall result in a suspension for the period originally provided for under this subsection or for the remainder of any unexpired suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation.

(d) Upon suspending the license of any person as hereinbefore in this section authorized, the Department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, unless a preliminary hearing was held before his license was suspended, as early as practical within not to exceed twenty (20) days after receipt of such request in the county wherein the licensee resides unless the Department and the licensee agree that such hearing may be held in some other county, and such notice shall contain the provisions of this section printed thereon. Upon such hearing the duly authorized agents of the Department may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon such hearing the Department shall either rescind its order of suspension, or good cause appearing therefor, may extend the suspension of such license. Provided further upon such a hearing, preliminary or otherwise, involving subdivisions (9) and (10) of subsection (a) of G.S. 20-16, the Department may for good cause appearing in its discretion substitute a period of probation for suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Department of Motor Vehicles and such period of probation shall not exceed one (1) year, and any violation of the probation agreement during the probation period shall result in a suspension for the period originally provided for or for the remainder of any unexpired suspension period. The authorized agents of the Department shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provides in connection with hearings held after suspension. (1935, c. 52, s. 11; 1947, c. 893, ss. 1, 2; c. 1067, s. 13; 1949, c. 373, ss. 1, 2; c. 1032, s. 2; 1953, c. 450; 1955, c. 1152, s. 15; c. 1187, ss. 9-12; 1957, c. 499, s. 1; 1959, c. 1242, ss. 1-2; 1961, c. 460, ss. 1, 2(a); 1963, c. 1115; 1965, c. 130.)

**Cross References.**—As to period of suspension or revocation, see § 20-19. See note to § 20-17.

**Editor's Note.**—For brief discussion of the 1949 amendments, see 27 N.C.L. Rev. 371, 372.

Section 3 of the 1959 amendatory act provided that it "is in addition to all other laws relating to the suspension or revocation of operators' and chauffeurs' licenses."

Section 4 of the 1961 amendatory act provided: "Section 1 of this act shall be ef-

fective on and after July 1, 1961 as to convictions occurring on and after said date, while G.S. 20-16 (a) (5) as the same has heretofore been written shall remain in effect as to convictions occurring before July 1, 1961. Convictions occurring before July 1, 1961 shall not be affected by this act nor shall points therefor be accumulated for more than twenty-four (24) months, but points assessed for convictions occurring on and after July 1, 1961 may be accumulated with points assessed



for convictions occurring prior to July 1, 1961, for purposes of suspension under the provisions of G.S. 20-16 (a) (5) as the same is hereby rewritten or as has heretofore been written."

The 1963 amendment inserted the fourth and fifth sentences of subsection (d).

Prior to the 1965 amendment, subdivision (6) of subsection (a) read "Has made or permitted an unlawful or fraudulent use of such license."

For article on administrative hearing for suspension of driver's license, see 30 N.C.L. Rev. 27 (1951).

**Former Subsection (a) (5) Unconstitutional.** — Before its amendment in 1959, subsection (a) (5) of this section provided for suspension of the license of a driver who was "an habitual violator of the traffic laws." This provision was held to be an unconstitutional grant of legislative power to the Department of Motor Vehicles, since it did not contain any fixed standard or guide to which the Department must conform but on the contrary left it to the sole discretion of the Commissioner of the Department to determine when a driver was an habitual violator of the traffic laws. *Harvel v. Scheidt*, 249 N.C. 699, 107 S.E.2d 549 (1959), holding also that a point system set up and used by the Department did not furnish an adequate standard or guide.

**Operation of Motor Vehicle on Highway Is a Personal Privilege.**—A license to operate motor vehicles on the public highways of North Carolina is a personal privilege and property right which may not be denied a citizen of this State who is qualified therefor under its statutes. In *re Donnelly*, 260 N.C. 375, 132 S.E.2d 904 (1963).

**Albeit a Conditional One.**—The right of a citizen to travel upon the public highways is a common right, but the exercise of that right may be regulated or controlled in the interest of public safety under the police power of the State. The operation of a motor vehicle on such highways is not a natural right. It is a conditional privilege, which may be suspended or revoked under the police power. *Honeycutt v. Scheidt*, 254 N.C. 607, 119 S.E.2d 777 (1961).

**And Licensee May Not Be Deprived of Such Privilege Except as Provided.** — A license to operate a motor vehicle may be suspended or revoked only in accordance with statutory provisions as they are written and construed in this jurisdiction. In *re Donnelly*, 260 N.C. 375, 132 S.E.2d 904 (1963).

A license to operate a motor vehicle is a

privilege in the nature of a right of which the licensee may not be deprived save in the manner and upon the conditions prescribed by statute. *Gibson v. Scheidt*, 259 N.C. 339, 130 S.E.2d 679 (1963).

**Judgment in Excess of Jurisdiction of Court.**—A judgment of the superior court requiring a defendant to surrender his license to drive a motor vehicle and prohibiting him from operating such vehicles for a specified period, is in excess of the jurisdiction of such court and is void. *State v. Cooper*, 224 N.C. 100, 29 S.E.2d 18 (1944).

A provision in a judgment in a prosecution for violation of a statutory provision regulating the operation of motor vehicles, that defendant's license be surrendered and that defendant not operate a motor vehicle on the public highways for a stipulated period, is void and will be stricken on appeal. *State v. Warren*, 230 N.C. 299, 52 S.E.2d 879 (1949).

**Power to suspend or revoke a driver's license is exclusively in the Department of Motor Vehicles subject to review by the superior court.** *State v. Warren*, 230 N.C. 299, 52 S.E.2d 879 (1949).

When a person is convicted of a criminal offense, the court has no authority to pronounce judgment suspending or revoking his operator's license or prohibiting him from operating a motor vehicle during a specified period. *State v. Cole*, 241 N.C. 576, 86 S.E.2d 203 (1955).

Discretionary suspensions and revocations of licenses by the Department of Motor Vehicles are reviewable under § 20-25, but mandatory revocations under § 20-17 are not so reviewable. In *re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948). See *State v. Cooper*, 224 N.C. 100, 29 S.E.2d 18 (1944); *Winesett v. Scheidt*, 239 N.C. 190, 79 S.E.2d 501 (1954); *Fox v. Scheidt*, 241 N.C. 31, 84 S.E.2d 259 (1954); *State v. Cole*, 241 N.C. 576, 86 S.E.2d 203 (1955); *Harrell v. Scheidt*, 243 N.C. 735, 92 S.E.2d 182 (1956).

**Suspension of License a Civil Proceeding.** —A proceeding to suspend an operator's license under this section is civil and not criminal in its nature. *Honeycutt v. Scheidt*, 254 N.C. 607, 119 S.E.2d 777 (1961).

**Extraterritorial Jurisdiction Not Conferred.**—The words "other satisfactory evidence" in this section refer to the form of notice of conviction in another state, and confer no extraterritorial jurisdiction of the offense itself. In *re Donnelly*, 260 N.C. 375, 132 S.E.2d 904 (1963).

This section and § 20-23 do not contemplate a suspension or revocation of li-

cense by reason of a conviction in North Carolina of an alleged offense committed beyond its borders. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

**But Evidence Relative to Offenses outside State May Be Considered.** — It is proper for the Department's hearing agent to hear and consider evidence bearing on guilt and innocence, among other things, relative to offenses outside the State, as assist him in reaching a decision in the exercise of discretionary authority. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

**Effect of Point System on Subsection (a) (9).**—The provisions of the 1959 amendment, establishing the point system, do not purport to repeal, modify or change in any manner the provisions of subsection (a) (9) of this section. Honeycutt v. Scheidt, 254 N.C. 607, 119 S.E.2d 777 (1961).

Hence, in cancelling the points accumulated over the period stipulated in subsection (c) of this section, upon which a suspension may be ordered, such cancellation does not cancel or change the number of convictions upon which a license may be suspended under the provisions of subsection (a) (9). Honeycutt v. Scheidt, 254 N.C. 607, 119 S.E.2d 777 (1961).

The Department of Motor Vehicles properly suspends a motor vehicle operator's license upon proof that the licensee had been convicted of speeding 60 miles per hour in a 50 mile per hour zone on two separate occasions within a twelve month period, even though one of the occasions had theretofore been used as the basis for a prior suspension of the license. Honeycutt v. Scheidt, 254 N.C. 607, 119 S.E.2d 777 (1961).

**Revocation or Suspension Not Mandatory for Reckless Driving.**—The offense of reckless driving in violation of § 20-140 is not an offense for which, upon conviction, the revocation or suspension of an operator's license is mandatory. In re Bratton, 263 N.C. 70, 138 S.E.2d 809 (1964).

**Court May Make Surrender of License a Condition to Suspension of Sentence.**—While the Department of Motor Vehicles is given the exclusive authority to suspend or revoke a driver's license, a court, either upon a plea of guilty or nolo contendere, may make the surrender of defendant's driver's license a condition upon which prison sentence or other penalty is suspended. Winesett v. Scheidt, 239 N.C. 190, 79 S.E.2d 501 (1954).

**Construed with § 20-23.**—This section and § 20-23 are parts of the same statute relating to the same subject matter and

must be construed in *pari materia*. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

The language of subdivision (7) of subsection (a) of this section and § 20-23 is almost identical. This section is the real source of authority. The latter section prescribes a rule of evidence and adds the power of revocation, when this section is the basis of action. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

**Conviction of Drunken Driving in Another State.**—Upon a receipt of notification from the highway department of another state that a resident of this State had there been convicted of drunken driving, the Department of Motor Vehicles has the right to suspend the driving license of such person. In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947).

**Effect of Conviction or Plea of Nolo Contendere to Offense Requiring Mandatory Revocation.**—Where the Department of Motor Vehicles suspends or revokes a driver's license under the provisions of this section, the Department must notify the licensee, and upon request afford him a hearing which is *de novo*, with right of appeal as prescribed by this section, and where the Department elects to proceed under this section it may not contend that the licensee has no right of appeal because of a conviction of or a plea of nolo contendere to an offense requiring mandatory revocation of license. Winesett v. Scheidt, 239 N.C. 190, 79 S.E.2d 501 (1954).

For note as to effect of plea of nolo contendere, see 32 N.C.L. Rev. 549 (1954).

**Conviction Must Be Followed by Appealable Judgment.**—In view of the provision in § 20-24 (c) to the effect that a "conviction," when used in this article, shall mean a final conviction, it would seem that before a license may be revoked pursuant to the provisions of this section, there must be a conviction of two or more offenses enumerated in subsection (a) (9) of this section, followed by a judgment from which an appeal might have been or may be taken. Barbour v. Scheidt, 246 N.C. 169, 97 S.E.2d 855 (1957).

**Conviction Is Not Final Where Prayer for Judgment Is Continued on Payment of Costs.**—Where, in prosecutions for speeding, prayer for judgment is continued upon payment of the costs, there are no final convictions within the purview of § 20-24 (c), and defendant's license to drive away may not be revoked therefor pursuant to this section. Barbour v. Scheidt, 246 N.C. 169, 97 S.E.2d 855 (1957).

**"Satisfactory Evidence."** — This section



uses the phrase "satisfactory evidence." Satisfactory evidence is such as a reasonable mind might accept as adequate to support a conclusion. It is equivalent to sufficient evidence, which is defined to be such evidence as in amount is adequate to justify the court or jury in adopting the conclusion in support of which it was adduced. *Winesett v. Scheidt*, 239 N.C. 190, 79 S.E.2d 501 (1954).

**When Licensee Entitled to Review.**—A licensee is entitled to a review whenever the suspension, cancellation, or revocation of a license is made in the discretion of the Department of Motor Vehicles, whether under this section, or § 20-23, or any other provision of the statute. *Carmichael v. Scheidt*, 249 N.C. 472, 106 S.E.2d 685 (1959).

**§ 20-16.1. Mandatory suspension of driver's license upon conviction of excessive speeding and reckless driving.**—Notwithstanding any other provisions of this article, the Department shall suspend for a period of thirty days the license of any operator or chauffeur without preliminary hearing on receiving a record of such operator's or chauffeur's conviction of exceeding by more than fifteen miles per hour the speed limit, either within or outside the corporate limits of a municipality, if such person was also driving at a speed in excess of fifty-five miles per hour at the time of the offense. Upon conviction of a similar second or subsequent offense which offense occurs within one year of the first or prior offense, the license of such operator or chauffeur shall be suspended for sixty days, provided such first or prior offense occurs subsequent to July 1, 1953.

Notwithstanding any other provisions of this article, the Department shall suspend for a period of sixty days the license of any operator or chauffeur without preliminary hearing on receiving a record of such operator's or chauffeur's conviction of having violated the laws against speeding described in the preceding paragraph and of having violated the laws against reckless driving on the same occasion as the speeding offense occurred.

The provisions of this section shall not prevent the suspension or revocation of a license for a longer period of time where the same may be authorized by other provisions of law.

Operators or chauffeurs whose licenses have been suspended under the provisions of this section shall not be required to maintain proof of financial responsibility upon reissuance of the license solely because of suspension pursuant to this section. (1953, c. 1223; 1955, c. 1187, s. 15; 1959, c. 1264, s. 4; 1965, c. 133.)

**Editor's Note.**—The 1965 amendment rewrote the first sentence.

**The operation of a motor vehicle on a public highway is not a natural right.** It is a conditional privilege which the State in the interest of public safety acting under its police power may regulate or control, and suspend or revoke the driver's license. *Shue v. Scheidt*, 252 N.C. 561, 114 S.E.2d 237 (1960).

This section was enacted to promote highway safety by providing for the mandatory suspension of a driver's license upon conviction of excessive speeding and reckless driving. *Shue v. Scheidt*, 252 N.C. 561, 114 S.E.2d 237 (1960).

**Remedy for Improper Deprivation of License.**—If a person has been improperly deprived of his license by the Department of Motor Vehicles due to mistake in law or fact, his remedy is to apply for a hearing as provided by subsection (d) of this section, or by petitioning the superior court pursuant to § 20-25. At a hearing under either of these statutory provisions, he would be permitted to show that the suspension was erroneous. One cannot contemptuously ignore the quasi-judicial determinations made by the Department of Motor Vehicles. *Beaver v. Scheidt*, 251 N.C. 671, 111 S.E.2d 881 (1960).

**Cited in** *Shue v. Scheidt*, 252 N.C. 561, 114 S.E.2d 237 (1960).

**And Not to Punish Licensee.**—The suspension or revocation of a driver's license is no part of the punishment for the violation or violations of traffic laws. The purpose of the suspension or revocation of a driver's license is to protect the public and not to punish the licensee. *Shue v. Scheidt*, 252 N.C. 561, 114 S.E.2d 237 (1960).

**It Applies to Violation of § 20-141 (d).**—This section applies where a driver is convicted of driving his passenger automobile at a speed of 75 miles per hour on a public highway in a 45-mile per hour speed zone established under subsection (d) of § 20-141, as such driving is a violation of subdivision (4) of subsection (b) of § 20-141.



Shue v. Scheidt, 252 N.C. 561, 114 S.E.2d 237 (1960), decided prior to the 1965 amendment to this section.

**License Must Be Suspended on Receipt of Record of Conviction.**—It is mandatory for the Department of Motor Vehicles to suspend for thirty days the license of any operator on receiving a record of such operator's conviction of any offense listed in this section. Gibson

v. Scheidt, 259 N.C. 339, 130 S.E.2d 679 (1963).

**Nolo Contendere Has Same Effect as Conviction.**—As a basis for suspension or revocation of an operator's license, a plea of nolo contendere has the same effect as a conviction or plea of guilty of such offense. Gibson v. Scheidt, 259 N.C. 339, 130 S.E.2d 679 (1963).

**§ 20-16.2. Operation of motor vehicle deemed consent to alcohol test; manner of administering; refusal to undergo.**—(a) Any person who operates a motor vehicle upon the public highways of this State or any area enumerated in G.S. 20-139 shall be deemed to have given consent, subject to the provisions of G.S. 20-139.1, to a chemical test of his breath for the purpose of determining the alcoholic content of his blood for any offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of intoxicating liquor. The test or tests shall be administered upon request of a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways of this State or any area enumerated in G.S. 20-139 while under the influence of intoxicating liquor.

(b) If a person under arrest refuses to submit to a chemical test under the provisions of G.S. 20-16.2, evidence of refusal shall be admissible in any criminal action growing out of an alleged violation of driving a motor vehicle upon the public highways of this State or any area enumerated in G.S. 20-139 while under the influence of intoxicating liquor. Provided: That before evidence of refusal shall be admissible in evidence in any such criminal action the court, upon motion duly made in apt time by the defendant, shall make due inquiry in the absence of the jury as to the character of the alleged refusal and the circumstances under which the alleged refusal occurred; and both the State and the accused shall be entitled to offer evidence upon the question of whether or not the accused actually refused to submit to the chemical test provided in G.S. 20-139.1. (1963, c. 966, s. 1; 1965, c. 1165.)

**Editor's Note.**—The 1965 amendment added the proviso in subsection (b).

plied consent, see 42 N.C.L. Rev. 841 (1964).

For comment on chemical tests and im-

**§ 20-17. Mandatory revocation of license by Department.**—The Department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction for any of the following offenses when such conviction has become final:

- (1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.
- (2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug.
- (3) Any felony in the commission of which a motor vehicle is used.
- (4) Failure to stop and render aid as required under the laws of this State in the event of a motor vehicle accident.
- (5) Perjury or the making of a false affidavit or statement under oath to the Department under this article or under any other law relating to the ownership of motor vehicles.
- (6) Conviction, or forfeiture of bail not vacated, upon two charges of reckless driving committed within a period of twelve months.
- (7) Conviction, or forfeiture of bail not vacated, upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale. (1935, c. 52, s. 12; 1947, c. 1067, s. 14.)

**Cross References.**—As to power to suspend or revoke license generally, see § 20-16 and note. As to period of suspension or revocation, see § 20-19.

**In General.**—It is mandatory for the Department to revoke the license of any operator upon receiving a record of such operator's conviction of any offense listed in this section. *Gibson v. Scheidt*, 259 N.C. 339, 130 S.E.2d 679 (1963).

**Revocation of License Not Part of Court's Punishment.**—The revocation of a license to operate a motor vehicle is not a part of, nor within the limits of punishment to be fixed by the court, wherein the offender is tried. When the conviction has become final, the revocation of the license by the Department of Motor Vehicles is a measure flowing from the police power of the State designed to protect users of the State's highways. *Harrell v. Scheidt*, 243 N.C. 735, 92 S.E.2d 182 (1956).

**Ministerial Duty.**—Mandatory revocation of an operator's license under this section is the performance of a ministerial duty. *Fox v. Scheidt*, 241 N.C. 31, 84 S.E.2d 259 (1954).

The record of a conviction, which has become final, suffices to invoke the ministerial duty of performing the mandatory requirement of the statute by the Department of Motor Vehicles. *Harrell v. Scheidt*, 243 N.C. 735, 92 S.E.2d 182 (1956).

**No action or order of the court is required** to put the revocation of the license into effect. *Harrell v. Scheidt*, 243 N.C. 735, 92 S.E.2d 182 (1956); *Barbour v. Scheidt*, 246 N.C. 169, 97 S.E.2d 855 (1957).

**"Forthwith"** does not mean the absolute exclusion of any interval of time, but means only that no unreasonable length of time shall intervene before performance. *State v. Ball*, 255 N.C. 351, 121 S.E.2d 604 (1961).

This section does not require the Commissioner to act instantaneously. *State v. Ball*, 255 N.C. 351, 121 S.E.2d 604 (1961).

**The provisions of subdivision (6) of this section are mandatory.** *Snyder v. Scheidt*, 246 N.C. 81, 97 S.E.2d 461 (1957).

**The word "conviction,"** as used in subdivision (6), refers to a final conviction by a court of competent jurisdiction. *Snyder v. Scheidt*, 246 N.C. 81, 97 S.E.2d 461 (1957).

**Applies Only to Conviction in North Carolina Court.**—The mandatory provision of this section applies only to a conviction

in a North Carolina court. *Carmichael v. Scheidt*, 249 N.C. 472, 106 S.E.2d 685 (1959).

**Date of Offense, Not Date of Conviction, Controls.**—Subdivision (6) of this section directs the revocation of a driver's license for one year upon his conviction of two charges of reckless driving committed within a period of twelve months, and if both offenses were committed within a twelve-month period, it is immaterial that the conviction of the second offense was entered more than twelve months after the first. The date of the offense, not the date of the conviction, is the determinative factor. *Snyder v. Scheidt*, 246 N.C. 81, 97 S.E.2d 461 (1957).

**Period of Revocation.**—Where there is mandatory revocation under subdivision (2) of this section, the period of revocation shall be as provided in § 20-19. *Carmichael v. Scheidt*, 249 N.C. 472, 106 S.E.2d 685 (1959).

**Review of Revocation.**—Mandatory revocations under this section are not reviewable under § 20-25. In *re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948); *Winesett v. Scheidt*, 239 N.C. 190, 79 S.E.2d 501 (1954); *Fox v. Scheidt*, 241 N.C. 31, 84 S.E.2d 259 (1954); *Harrell v. Scheidt*, 243 N.C. 735, 92 S.E.2d 182 (1956).

The mandatory provision of this section is not subject to judicial review. *Carmichael v. Scheidt*, 249 N.C. 472, 106 S.E.2d 685 (1959).

**Notice and Record Showing Revocation under Section.**—An official notice and record of "revocation of license" for the specified reason of "conviction of involuntary manslaughter" mailed to a driver by the Department of Motor Vehicles, was held to show that the license was revoked under this section rather than suspended under § 20-16, and did not support a finding by the trial court that the license was suspended under the latter statute. *Mintz v. Scheidt*, 241 N.C. 268, 84 S.E.2d 882 (1954).

**Revocation Not Mandatory for Reckless Driving.**—The offense of reckless driving in violation of § 20-140 is not an offense for which, upon conviction, the revocation or suspension of an operator's license is mandatory. In *re Bratton*, 263 N.C. 70, 133 S.E.2d 809 (1964).

**Department Not Estopped to Assert That It Acted under Section.**—Where the Department of Motor Vehicles revokes a driver's license under the mandatory provisions of this section, the Department will not be stopped from asserting that it was

acting under the provisions of this section by reason of a letter subsequently written to the licensee granting him a hearing under § 20-16 (c), [now subsection (d)] since in such instance a hearing is authorized by law. *Mintz v. Scheidt*, 241 N.C. 268, 84 S.E.2d 882 (1954).

**Plea of Nolo Contendere.**—This section mandatorily required the Department of Motor Vehicles to revoke the petitioner's license upon receipt of the record from the superior court of his plea of nolo contendere, which in that case for the purposes of that case was equivalent to a conviction to the charge of driving a motor vehicle while under the influence of intoxicating liquor upon the public highways. *Fox v. Scheidt*, 241 N.C. 31, 84 S.E.2d 259 (1954).

As a basis for suspension or revocation of an operator's license, a plea of nolo contendere has the same effect as a conviction or plea of guilty of such offense. *Gibson v. Scheidt*, 259 N.C. 339, 130 S.E.2d 679 (1963).

A plea of nolo contendere to a charge of manslaughter resulting from the operation of an automobile supports the revocation of the driver's license under the mandatory provisions of this section. *Mintz v. Scheidt*, 241 N.C. 268, 84 S.E.2d 882 (1954).

**Evidence** that defendant has been convicted for operating an automobile while under the influence of intoxicants, was competent on the question as to whether a driver's license issued to defendant had been legally revoked. *State v. Stewart*, 224 N.C. 528, 31 S.E.2d 534 (1944).

**§ 20-17.1. Revocation of licenses of mental incompetents and inebriates; procedure.**—(a) The Commissioner, upon receipt of notice that any person has been (i) legally adjudged to be insane, or a congenital idiot, an imbecile, epileptic or feeble-minded, or (ii) committed to, or has entered, an institution as an inebriate or an habitual user of narcotic drugs, shall forthwith revoke his license, but he shall not revoke the license if the person has been adjudged competent by judicial order or decree, or discharged as cured from an institution for the insane or feeble-minded, for the cure of inebriates, or for the treatment of habitual users of narcotic drugs, upon a certificate of the person in charge that the releasee is competent.

(b) In any case in which the person's license has been revoked or suspended prior to his release it shall not be returned to him unless the Commissioner is satisfied that he is competent to operate a motor vehicle with safety to persons and property and only then if he gives and maintains proof of financial responsibility.

(c) The clerk of the court in which any such adjudication is made shall forthwith send a certified copy of abstract thereof to the Commissioner.

(d) The person in charge of every institution of any nature for the care or cure of the insane, idiots, imbeciles, epileptic, feeble-minded, inebriates or habitual users of narcotic drugs, shall forthwith report to the Commissioner in sufficient detail for accurate identification the admission of every patient. (1947, c. 1006, s. 9; 1953, c. 1300, s. 36; 1955, c. 1187, s. 16.)

**Editor's Note.**—The 1953 act re-enacted former § 20-232 and renumbered it as this section.

**§ 20-18. Conviction of offenses described in section 20-181 not ground for suspension or revocation.**—Conviction of offenses described in § 20-181 shall not be cause for the suspension or revocation of operator's or chauffeur's license under the terms of this article. (1939, c. 351, s. 2; 1955, c. 913, s. 1.)

**Cited in** *State v. McDaniels*, 219 N.C. 763, 14 S.E.2d 793 (1941).

**§ 20-19. Period of suspension or revocation.**—(a) When a license is suspended under subdivision (9) of § 20-16 (a), the period of suspension shall be in the discretion of the Department and for such time as it deems best for public safety but shall not exceed six (6) months.

(b) When a license is suspended under subdivision (10) of § 20-16 (a), the



period of suspension shall be in the discretion of the Department and for such time as it deems best for public safety but shall not exceed a period of twelve (12) months.

(c) When a license is suspended under any other provision of this article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(d) When a license is revoked because of a second conviction for driving under the influence of intoxicating liquor or a narcotic drug, occurring within three years after a prior conviction, the period of revocation shall be four years; provided, that the Department may, after the expiration of two years, issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past two years and that his conduct and attitude are such as to entitle him to favorable consideration and upon such terms and conditions which the Department may see fit to impose for the balance of said period of revocation; provided, that as to a license which has been revoked because of a second conviction for driving under the influence of intoxicating liquor or a narcotic drug prior to May 2, 1957, and which has not been restored, the Department may upon the application of the former licensee, and after the expiration of two years of such period of revocation, issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past two years and that his conduct and attitude are such as to entitle him to favorable consideration and upon such terms and conditions which the Department may see fit to impose for the balance of a four-year revocation period, which period shall be computed from the date of the original revocation.

(e) When a license is revoked because of a third or subsequent conviction for driving under the influence of intoxicating liquor or a narcotic drug, occurring within five years after a prior conviction, the period of revocation shall be permanent; provided, that the Department may, after the expiration of three years, issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past three years and that his conduct and attitude are such as to entitle him to favorable consideration; provided, that as to a license which has been revoked because of a third or subsequent conviction for driving under the influence of intoxicating liquor or a narcotic drug prior to May 2, 1957, and which license has not been restored, the Department may, upon application of the former licensee and after the expiration of three years of such period of revocation, issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past three years and that his conduct and attitude are such as to entitle him to favorable consideration.

(f) When a license is revoked under any other provision of this article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of § 20-16 (a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period. (1935, c. 52, s. 13; 1947, c. 1067, s. 15; 1951, c. 1202, ss. 2-4; 1953, c. 1138; 1955, c. 1187, ss. 13, 17, 18; 1957, c. 499, s. 2; c. 515, s. 1; 1959, c. 1264, s. 11A.)

**The provisions of subsection (f) of this section are mandatory.** *Snyder v. Scheidt*. 246 N.C. 81, 97 S.E.2d 461 (1957).

**Warrant Need Not Charge Second Offense in Order to Support Three Year Revocation.** — Where defendant's driver's license had been suspended in 1947 for a period of one year for conviction of driv-

ing while under the influence of intoxicating liquor and in 1954 defendant pleads guilty to another such offense upon warrant not charging a second offense, the Department of Motor Vehicles, upon receipt of the report of the later conviction, must revoke defendant's license for the period provided by subsection (d) of this

section. *Harrell v. Scheidt*, 243 N.C. 735, 92 S.E.2d 182 (1956).

**Where there is mandatory revocation under subdivision (2) of § 20-17**, the period of revocation shall be as provided in this section. *Carmichael v. Scheidt*, 249 N.C. 472, 106 S.E.2d 685 (1959).

**Effective Date of Revocation.**—A revocation based on a second offense for driving while under the influence of intoxicating liquor or a narcotic drug must be for a period of three (now four) years, and the effective date of the revocation for such period should not begin prior to the date of the second conviction. Likewise, when a license is permanently revoked, the effective date of such revocation should not be earlier than the date of the conviction for the third offense.

**§ 20-20. Surrender and return of license.**—The Department upon suspending or revoking a license shall require that such license shall be surrendered to and be retained by the Department except that at the end of a period of suspension such license so surrendered shall be returned to the licensee. (1935, c. 52, s. 14; 1943, c. 649, s. 4.)

**§ 20-21. No operation under foreign license during suspension or revocation in this State.**—Any resident or nonresident whose operator's or chauffeur's license or right or privilege to operate a motor vehicle in this State has been suspended or revoked as provided in this article shall not operate a motor vehicle in this State under a license, permit or registration issued by another jurisdiction or otherwise during such suspension, or after such revocation until a new license is obtained when and as permitted under this article. (1935, c. 52, s. 15.)

**§ 20-22. Suspending privileges of nonresidents and reporting convictions.**—(a) The privilege of driving a motor vehicle on the highways of this State given to a nonresident hereunder shall be subject to suspension or revocation by the Department in like manner and for like cause as an operator's or chauffeur's license issued hereunder may be suspended or revoked.

(b) The Department is further authorized, upon receiving a record of the conviction in this State of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this State, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident. (1935, c. 52, s. 16.)

Cited in *Morrissey v. Crabtree*, 143 F. Supp. 105 (M.D.N.C. 1956).

**§ 20-23. Suspending resident's license upon conviction in another state.**—The Department is authorized to suspend or revoke the license of any resident of this State upon receiving notice of the conviction of such person in another state of any offense therein which, if committed in this State, would be grounds for the suspension or revocation of the license of an operator or chauffeur. (1935, c. 52, s. 17.)

**Cross Reference.**—See note to § 20-16.

**Section Is Not Mandatory.**—The Department of Motor Vehicles, under provisions of this section, is merely authorized, not directed, to suspend or revoke the li-

*Carmichael v. Scheidt*, 249 N.C. 472, 106 S.E.2d 685 (1959).

**Period of Suspension Runs from Date of Order by Department.**—When within five days from receipt of notice of conviction the Department ordered the revocation of an operator's license for one year, the revocation was in effect until the same date in the following year, and did not expire one year from the date of conviction or the date of receipt of notice by the Department. *State v. Ball*, 255 N.C. 351, 121 S.E.2d 604 (1961).

**Applied in** *Fox v. Scheidt*, 241 N.C. 31, 84 S.E.2d 259 (1954); *State v. Moore*, 247 N.C. 368, 101 S.E.2d 26 (1957); *Honeycutt v. Scheidt*, 254 N.C. 607, 119 S.E.2d 777 (1961); *Gibson v. Scheidt*, 259 N.C. 339, 130 S.E.2d 679 (1963).

cense of any resident of this State upon receiving notice of the conviction of such person in another state of any offense therein which, if committed in this State, would be grounds for the suspension or



revocation of the license of an operator or chauffeur. *Carmichael v. Scheidt*, 249 N.C. 472, 106 S.E.2d 685 (1959).

**Construed with § 20-16.**—See note to § 20-16.

**And § 20-25.**—This section and § 20-25 must be construed in *pari materia*. In *re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948).

**Licensee May Show Invalidity of Out-of-State Conviction.**—Where order of the Department of Motor Vehicles permanently revoking the license of a driver for a third conviction of such driver for operating a motor vehicle while under the influence of intoxicating liquor, is based in part upon notice of the licensee's conviction of that offense in another state, the licensee has the right to show, if he can, that the proceedings in such other state were irregular, invalid and insufficient to support the reported conviction, and is entitled to a hearing *de novo* in the superior court upon his petition for review. The sustaining of a demurrer to

such petition is error, petitioner being entitled to an adjudication of the validity of the out-of-state conviction in order to determine whether the revocation should be permanent or for the period of time prescribed by subsection (d) of § 20-19. *Carmichael v. Scheidt*, 249 N.C. 472, 106 S.E.2d 685 (1959).

**Conviction of Drunken Driving.**—Upon a receipt of notification from the highway department of another state that a resident of this State had there been convicted of drunken driving, the Department of Motor Vehicles has the right to suspend the driving license of such person. In *re Wright*, 228 N.C. 301, 45 S.E.2d 370 (1947).

**Notice May Be from Any Source.**—This section does not limit the notice of conviction in another state, upon which the Department may act, to notice from a judicial tribunal or other official agency. Under the wording of the statute, from whatever source the notice may come, the Department may act. In *re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948).

**§ 20-23.1. Suspending or revoking operating privilege of person not holding license.**—In any case where the Department would be authorized to suspend or revoke the license of a person but such person does not hold a license, the Department is authorized to suspend or revoke the operating privilege of such a person in like manner as it could suspend or revoke his license if such person held an operator's or chauffeur's license, and the provisions of this chapter governing suspensions, revocations, issuance of a license, driving after license suspended or revoked, and filing of proof of financial responsibility shall apply in the discretion of the Department in the same manner as if the license had been suspended or revoked. (1955, c. 1187, s. 19.)

**§ 20-24. When court to forward license to Department and report convictions.**—(a) Whenever any person is convicted of any offense for which this article makes mandatory the revocation of the operator's or chauffeur's license of such person by the Department, the court in which such conviction is had shall require the surrender to it of all operators' and chauffeurs' licenses then held by the person so convicted and the court shall thereupon forward the same, together with a record of such conviction, to the Department.

The clerks of court, assistant clerks of court and deputy clerks of court in which any person is convicted, and as a result thereof the revocation or suspension of the operator's or chauffeur's license of such person is required under the provisions of this chapter, are hereby designated as agents of the Department of Motor Vehicles for the purpose of receiving all operators' and chauffeurs' licenses required to be surrendered under this section, and are hereby authorized to and shall give to such licensee a dated receipt for any such license surrendered, such receipt to be upon such form as may be approved by the Commissioner of Motor Vehicles. The original of such receipt shall be mailed forthwith to the Driver License Division of the Department of Motor Vehicles together with the operator's or chauffeur's license. Any operator's or chauffeur's license, which has been surrendered and for which a receipt has been issued as herein required, shall be revoked or suspended as the case may be as of the date shown upon the receipt issued to such person.

(b) Every court having jurisdiction over offenses committed under this article, or any other law of this State regulating the operation of motor vehicles on high-



ways, shall forward to the Department a record of the conviction of any person in said court for a violation of any said laws, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted. Every court shall also forward to the Department a record of every conviction in which sentence is suspended on condition that the defendant not operate a motor vehicle for a period of time, and such report shall state the period of time for which such condition is imposed; provided that the punishment for the violation of this subsection shall be the same as provided in § 20-7 (n).

(c) For the purpose of this article the term "conviction" shall mean a final conviction. Also, for the purposes of this article a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

(d) After November 1, 1935, no operator's or chauffeur's license shall be suspended or revoked except in accordance with the provisions of this article. (1935, c. 52, s. 18; 1949, c. 373, ss. 3, 4; 1955, c. 1187, s. 14; 1959, c. 47; 1965, c. 38.)

**Local Modification.** — Hertford as to subsection (b): 1953, c. 1059; Washington, as to subsection (b): 1953, c. 765.

**Editor's Note.** — The 1965 amendment added the second paragraph in subsection (a).

**Jurisdiction to Revoke.** — A municipal court is without authority to revoke a driver's license, the power to suspend or revoke drivers' licenses being vested exclusively in the Department of Revenue, subject to the right of review by the superior court, as provided in the following section. *State v. McDaniels*, 219 N.C. 763, 14 S.E.2d 793 (1941).

**Meaning of Forfeiture of Bail or Collateral.** — "Bail" as here used means security for a defendant's appearance in court to answer a criminal charge there pending. Ordinarily it is evidenced by a bond or recognizance which becomes a record of the court. The forfeiture thereof is a judicial act. *In re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948).

The mere deposit of money with an arresting officer or magistrate pending issuance and service of warrant, which deposit is retained without the semblance of judicial or legal forfeiture is not a forfeiture of "bail" within the meaning of subsection (c) of this section. *In re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948); *In re Donnelly*, 260 N.C. 375, 132 S.E.2d 904 (1963).

Where no warrant is served, no legal action is pending in court; and when no legal action is pending, there can be no valid judgment of forfeiture of bail. *In re Donnelly*, 260 N.C. 375, 132 S.E.2d 904 (1963).

**Plea of Nolo Contendere.** — When the petitioner entered a plea of nolo contendere to the charge of a second offense of operating an automobile upon the public highways of the State, while under the influence of intoxicating liquor, which plea was accepted by the court, for the purposes of that case in that court, such plea was equivalent to a plea of guilty, or conviction by a jury, and subsection (a) of this section required that court to enter a notation of such conviction upon the license of petitioner to operate an automobile in North Carolina, and to compel the surrender to it of such license then held by petitioner, and thereupon to forward the license, together with a record of the conviction to the Department of Motor Vehicles. *Fox v. Scheidt*, 241 N.C. 31, 84 S.E.2d 259 (1954).

**When Conviction Final.** — The conviction alone, without the imposition of a judgment from which an appeal might be taken, is not a final conviction within the terms of subsection (c). *Barbour v. Scheidt*, 246 N.C. 169, 97 S.E.2d 855 (1957).

A conviction in a criminal case is not final within the meaning of subsection (c) of this section where no judgment is imposed on the verdict, but merely an order is entered continuing prayer for judgment upon payment of costs. *Barbour v. Scheidt*, 246 N.C. 169, 97 S.E.2d 855 (1957).

**Applied in** *State v. Ball*, 255 N.C. 351, 121 S.E.2d 604 (1961).

**Quoted in** *Harrell v. Scheidt*, 243 N.C. 735, 92 S.E.2d 182 (1956).

**Stated in** *Winesett v. Scheidt*, 239 N.C. 190, 79 S.E.2d 501 (1954).

**§ 20-25. Right of appeal to court.** — Any person denied a license or whose license has been cancelled, suspended or revoked by the Department, except where such cancellation is mandatory under the provisions of this article, shall have a right to file a petition within thirty (30) days thereafter for a hearing in

the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district in which the violation was committed, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon thirty (30) days' written notice to the Department, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this article. (1935, c. 52, s. 19.)

By the 1941 Act, c. 36, the power to suspend or revoke drivers' licenses after July 1, 1941, vested exclusively in the newly created Department of Motor Vehicles, subject to the same right of review by the superior court as existed prior to that date. *State v. Cooper*, 224 N.C. 100, 29 S.E.2d 18 (1944).

**Construed with § 20-23.** — This section and § 20-23 must be construed in *pari materia*. In *re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948).

The jurisdiction vested by this section is not a delegation of legislative and administrative authority. The review is judicial and is governed by the standards and guides which are applicable to other judicial proceedings. In *re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948).

And failure of the section to provide standards for the guidance of the courts does not invalidate it or negate the jurisdiction. In *re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948).

Such jurisdiction is not the limited, inherent power of courts to review the discretionary acts of an administrative officer. The power is conferred by statute, and the statute must be looked to in order to ascertain the nature and extent of the review contemplated by the legislature. In *re Wright*, 228 N.C. 301, 45 S.E.2d 370 (1947).

**The Section Imposes Additional Jurisdiction.** — The court has inherent authority to review the discretionary action of an administrative agency, whenever such action affects personal or property rights, upon a *prima facie* showing, by petition for a writ of certiorari, that such agency has acted arbitrarily, capriciously, or in disregard of law. This section dispenses with the necessity of an application for writ of certiorari, provides for direct approach to the courts and enlarges the scope of the hearing. That the legislature had full authority to impose this additional jurisdiction upon the courts is beyond question. In *re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948).

But no discretionary power is conferred upon the court in reviewing the suspension

or revocation of driving licenses, and the court may determine only if, upon the facts, petitioner's license is subject to suspension or revocation under the provisions of the statute. In *re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948).

On appeal and hearing *de novo* in the superior court, that court is not vested with discretionary authority. It makes judicial review of the facts, and if it finds that the license of petitioner is in fact and in law subject to suspension or revocation the order of the Department must be affirmed, otherwise not. In *re Donnelly*, 260 N.C. 375, 132 S.E.2d 904 (1963).

**Discretionary suspensions and revocations of driving licenses by the Department of Motor Vehicles are reviewable under this section.** *State v. Cooper*, 224 N.C. 100, 29 S.E.2d 18 (1944); In *re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948).

**By Trial De Novo.** — All suspensions, cancellations and revocations of driving licenses made in the discretion of the Department of Motor Vehicles, whether under §§ 20-16, 20-23 or any other provision of this chapter, are reviewable by trial *de novo*. In *re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948).

The hearing in the superior court is *de novo*, and the court is not bound by the findings of fact or the conclusion of law made by the Department. In *re Wright*, 228 N.C. 301, 45 S.E.2d 370 (1947); *Fox v. Scheidt*, 241 N.C. 31, 84 S.E.2d 259 (1954).

**But mandatory revocations under § 20-17 are not reviewable.** And no right accrues to a licensee who petitions for a review of the order of the Department when it acts under the terms of § 20-17, for then its action is mandatory. In *re Wright*, 228 N.C. 584, 46 S.E.2d 696 (1948); *Winesett v. Scheidt*, 239 N.C. 190, 79 S.E.2d 501 (1954); *Fox v. Scheidt*, 241 N.C. 31, 84 S.E.2d 259 (1954); *Mintz v. Scheidt*, 241 N.C. 268, 84 S.E.2d 882 (1954).

**Hearing by Department Is Prerequisite to Court Review.** — Section 20-16 (c) provides for a rehearing by the Department of Motor Vehicles upon application of a licensee whose license has been suspended,

and this procedure should be followed and should be made to appear in the petition before review by the superior court. In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947).

**Cancellation of Suspension.** — Petitioner was arrested in South Carolina charged with operating a motor vehicle while under the influence of intoxicants. He gave bond for appearance, but no warrant was served on him and no trial had, and his bond was forfeited. His license was suspended by the Department of Motor Vehicles upon information of the Highway Department of South Carolina that he had been found guilty of driving while intoxicated. Upon review the superior court found, in addition, that the suspension was based upon misinformation and further that petitioner in fact was not guilty. It was held that the findings supported the court's order directing the respondent to cancel the suspension and to restore license to petitioner. In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947).

**Remedy for Improper Deprivation of License.**—If an individual has been improperly deprived of his license by the Department of Motor Vehicles due to a mistake of law or fact his remedy is to apply for a hearing as provided by § 20-16 (d) or by application to the superior court, as permitted by this section. At a hearing held pursuant to either of these sections he would be permitted to show that the suspension was erroneous. He could not ig-

nore the quasi-judicial determination made by the Department. *Beaver v. Scheidt*, 251 N.C. 671, 111 S.E.2d 881 (1960).

**Review of Revocation Based on Conviction of Offense in Another State.** — The fact that the Department of Motor Vehicles in the exercise of its discretion accepted the certification of a conviction in another state at its face value, did not foreclose the petitioner's right to review as provided in this section. In other words, the General Assembly has never made it mandatory on the Department to suspend or revoke the license of a resident of this State based on the conviction of such person in another state of any offense therein which, if committed in this State, would make the revocation mandatory. *Carmichael v. Scheidt*, 249 N.C. 472, 106 S.E.2d 685 (1959).

On appeal from a suspension of a resident's license under § 20-23, it is the conviction in another state that is under review in the superior court. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

The superior court of North Carolina may not determine the guilt of a license holder, with respect to offenses alleged to have been committed in another state, as the sole predicate for suspension or revocation of his license. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

**Applied in** *Barbour v. Scheidt*, 246 N.C. 169, 97 S.E.2d 855 (1957); *State v. Virgil*, 263 N.C. 73, 138 S.E.2d 777 (1964).

**§ 20-26. Records; copies furnished.**—(a) The Department shall keep a record of proceedings and orders pertaining to all operator's and chauffeur's licenses granted, refused, suspended or revoked.

(b) The Department shall furnish certified copies of license records required to be kept by subsection (a) of this section to State, county, municipal and court officials of this State for official use only, without charge.

(c) The Department shall furnish copies of license records required to be kept by subsection (a) of this section to other persons, firms and corporations for uses other than official upon prepayment of the fee therefor, according to the following schedule:

- |  |        |
|--|--------|
| (1) Limited extract copy of license record, for period up to three |        |
| (3) years .....  | \$ .50 |
| (2) Complete extract copy of license record .....                  | 1.00   |
| (3) Certified true copy of complete license record .....           | 3.00   |

All fees received by the Department under the provisions of this subsection shall be paid into and become a part of the "Operator's and Chauffeur's License Fund." (1935, c. 52, s. 20; 1961, c. 307.)

**§ 20-27. Availability of records.**—All records of the Department pertaining to application and to operator's and chauffeur's license, except the confidential medical report referred to in § 20-7, of the current or previous five years shall be open to public inspection at any reasonable time during office hours. (1935, c. 52, s. 21.)



**§ 20-28. Unlawful to drive while license suspended or revoked.—**

(a) Any person whose operator's or chauffeur's license has been suspended or revoked other than permanently, as provided in this chapter, who shall drive any motor vehicle upon the highways of the State while such license is suspended or revoked shall be guilty of a misdemeanor and his license shall be suspended or revoked, as the case may be, for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense; provided, any person whose license has been permanently suspended or revoked under this section may apply for a new license after three years from the commencement of the permanent suspension or revocation. Upon the filing of such application, the Department may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has been of good behavior for a minimum of three years from the last date of suspension or revocation and that his conduct and attitude are such as to entitle him to favorable consideration.

Notwithstanding any other provisions of this section, in those cases of conviction of the offense provided in this section in which the judge and solicitor of the court wherein a conviction for violation of this section was obtained recommend in writing to the Department that the Department examine into the facts of the case and exercise discretion in suspending or revoking the driver's license for the additional periods provided by this section, the Department shall conduct a hearing and may impose a lesser period of additional suspension or revocation than that provided in this section or may refrain from imposing any additional period. Any person convicted of violating this section before or after May 14, 1959, shall be entitled to the benefit of the foregoing relief provisions.

Upon conviction, a violator of this section shall be punished by a fine of not less than two hundred dollars (\$200.00) or imprisonment in the discretion of the court, or both; provided, however, the restorer of a suspended or revoked operator's or chauffeur's license who operates a motor vehicle upon the streets or highways of the State without maintaining financial responsibility as provided by law shall be punished as for operating without an operator's license.

(b) Any person whose license has been permanently revoked, as provided in this article, who shall drive any motor vehicle upon the highways of the State while such license is permanently revoked shall be guilty of a misdemeanor and shall be imprisoned for not less than one year. (1935, c. 52, s. 22; 1945, c. 635; 1947, c. 1067, s. 16; 1955, c. 1020, s. 1; c. 1152, s. 18; c. 1187, s. 20; 1957, c. 1406; 1959, c. 515.)

In the 1957 amendment of this section the General Assembly anticipated there would be hardship cases where the violation of subsection (a) would be technical rather than willful. *Gibson v. Scheidt*, 259 N.C. 339, 130 S.E.2d 679 (1963).

**Operation Must Have Occurred During Suspension or Revocation.**—To constitute a violation of subsection (a) the operation of a motor vehicle must occur "while such license is suspended or revoked," that is, during the period of suspension or revocation. *State v. Sossamon*, 259 N.C. 374, 130 S.E.2d 638 (1963).

Subsection (a) deals solely and directly with the offense of driving while one's operator's license is suspended or revoked and contains provisions bearing directly upon periods of suspension and revocation

upon conviction. In *re Bratton*, 263 N.C. 70, 138 S.E.2d 809 (1964).

**Suspension or Revocation under Subsection (a) Not Proper without Conviction.**—Where plaintiff has never been convicted of or tried for the offense defined in subsection (a), unless and until he is so tried and convicted, subsection (a) vests no authority in the Department in respect of the suspension or revocation of his operator's license. *Gibson v. Scheidt*, 259 N.C. 339, 130 S.E.2d 679 (1963).

**A warrant is fatally defective which does not allege in words or in substance an essential element of the offense defined in subsection (a).** *State v. Sossamon*, 259 N.C. 374, 130 S.E.2d 638 (1963).

**Collateral Attack on Order of Revocation Not Permitted.**—Defendant could not,

when on trial for the criminal offense of driving while his license was revoked, collaterally attack the record of revocation which did not on its face disclose invalidity. *State v. Ball*, 255 N.C. 351, 121 S.E.2d 604 (1961).

**Intent Immaterial.**—The operation of a motor vehicle upon the highways of the State by a person whose driver's license has been revoked is unlawful, regardless

of intent, since the specific performance of the act forbidden constitutes the offense itself. *State v. Correll*, 232 N.C. 696, 62 S.E.2d 82 (1950).

**Applied in** *State v. Meadows*, 234 N.C. 657, 68 S.E.2d 406 (1951); *Beaver v. Scheidt*, 251 N.C. 671, 111 S.E.2d 881 (1960); *State v. Sossamon*, 259 N.C. 378, 130 S.E.2d 640 (1963); *State v. Blackwelder*, 263 N.C. 96, 138 S.E.2d 787 (1964).

**§ 20-28.1. Conviction of moving violation committed while driving during period of suspension or revocation of license.**—(a) Upon receipt of notice of conviction of any motor vehicle moving violation committed while driving a motor vehicle, such offense having been committed while such person's operator's or chauffeur's license was in a state of suspension or revocation, the Department shall revoke the person's license effective on the date set for termination of the suspension or revocation which was in effect at the time of such offense.

(b) When a license is subject to revocation under this section, the period of revocation shall be as follows:

- (1) A first such revocation shall be for one year;
- (2) A second such revocation shall be for two years; and
- (3) A third or subsequent such revocation shall be permanent.

(c) Any person whose license has been permanently revoked under this section may apply for a new license after three years from the commencement of the permanent revocation. Upon the filing of such application, the Department may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has been of good behavior for a minimum of three years from the last date of revocation and that his conduct and attitude are such as to entitle him to favorable consideration. (1965, c. 286.)

**§ 20-29. Surrender of license.** — Any person operating or in charge of a motor vehicle, when requested by an officer in uniform, or, in the event of accident in which the vehicle which he is operating or in charge of shall be involved, when requested by any other person, who shall refuse to write his name for the purpose of identification or to give his name and address and the name and address of the owner of such vehicle, or who shall give a false name or address, or who shall refuse, on demand of such officer or such other person, to produce his license and exhibit same to such officer or such other person for the purpose of examination, or who shall refuse to surrender his license on demand of the Department, or fail to produce same when requested by a court of this State, shall be guilty of a misdemeanor and upon conviction shall be punished as provided in this article. Pickup notices for operators' or chauffeurs' licenses or revocation or suspension of license notices and orders or demands issued by the Department for the surrender of such licenses may be served and executed by patrolmen or other peace officers, and such patrolmen and peace officers, while serving and executing such notices, orders and demands, shall have all the power and authority possessed by peace officers when serving and executing warrants charging violations of the criminal laws of the State. (1935, c. 52, s. 23; 1949, c. 583, s. 7.)

**Sufficiency of Warrant.**—A warrant under this section was fatally defective where it failed to aver that defendant refused to exhibit his license upon request while operating or in charge of a motor vehicle.

The warrant should also name the officer who demands the right to inspect the license. *State v. Danziger*, 245 N.C. 406, 95 S.E.2d 862 (1957).

**§ 20-29.1. Commissioner may require re-examination; issuance of limited or restricted licenses.**—The Commissioner of Motor Vehicles, hav-

ing good and sufficient cause to believe that a licensed operator or chauffeur is incompetent or otherwise not qualified to be licensed, may, upon written notice of at least five days to such licensee, require him to submit to a re-examination to determine his competency to operate a motor vehicle. Upon the conclusion of such examination, the Commissioner shall take such action as may be appropriate, and may suspend or revoke the license of such person or permit him to retain such license, or may issue a license subject to restrictions. Refusal or neglect of the licensee to submit to such re-examination shall be grounds for the suspension or revocation of his license. The Commissioner may, in his discretion and upon the written application of any person qualified to receive an operator's or chauffeur's license, issue to such person an operator's or chauffeur's license restricting or limiting the licensee to the operation of a single prescribed motor vehicle or to the operation of a particular class or type of motor vehicle. Such a limitation or restriction shall be noted on the face of the license, and it shall be unlawful for the holder of such limited or restricted license to operate any motor vehicle or class of motor vehicle not specified by such restricted or limited license, and the operation by such licensee of motor vehicles not specified by such license shall be deemed the equivalent of operating a motor vehicle without any chauffeur's or operator's license. Any such restricted or limited licensee may at any time surrender such restricted or limited license and apply for and receive an unrestricted operator's or chauffeur's license upon meeting the requirements therefor. (1943, c. 787, s. 2; 1949, c. 1121.)

**§ 20-30. Violations of license provisions.**—It shall be unlawful for any person to commit any of the following acts:

- (1) To display or cause to be displayed or to have in possession any operator's or chauffeur's license, knowing the same to be fictitious or to have been cancelled, revoked, suspended or altered.
- (2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, any operator's or chauffeur's license.
- (3) To display or to represent as one's own a license not issued to the person so displaying same.
- (4) To fail or refuse to surrender to the Department upon demand any license or the badge of any chauffeur whose license has been suspended, cancelled or revoked as provided by law.
- (5) To use a false or fictitious name or give a false or fictitious address in any application for an operator's or chauffeur's license, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application. Any license procured as aforesaid shall be void from the issuance thereof, and any monies paid therefor shall be forfeited to the State.
- (6) To photostat or otherwise reproduce an operator's or chauffeur's license or to possess an operator's or chauffeur's license which has been photostated or otherwise reproduced, unless such photostat or other reproduction was authorized by the Commissioner. (1935, c. 52, s. 24; 1951, c. 542, s. 4.)

**§ 20-31. Making false affidavits perjury.**—Any person who shall make any false affidavit, or shall knowingly swear or affirm falsely, to any matter or thing required by the terms of this article to be sworn to or affirmed shall be guilty of perjury and upon conviction shall be punished by fine or imprisonment as other persons committing perjury are punishable under the laws of this State. (1935, c. 52, s. 25.)

**Cross Reference.**—As to perjury, see § 14-209 et seq.



**§ 20-32. Unlawful to permit unlicensed minor to drive motor vehicle.**—It shall be unlawful for any person to cause or knowingly permit any minor over sixteen and under the age of eighteen years to drive a motor vehicle upon a highway as an operator, unless such minor shall have first obtained a license to so drive a motor vehicle under the provisions of this article. (1935, c. 52, s. 26.)

**Editor's Note.** — Most of the cases treated below were decided under a corresponding provision of an earlier law, but should be of assistance in the interpretation of the present section.

**Violation of Age Limit as Negligence.**—Where a person within the age prohibited by the statute runs an automobile upon and injures a pedestrian, the violation of the statute is negligence per se, and a charge by the court that it is a circumstance from which the jury could infer negligence is reversible error. *Taylor v. Stewart*, 172 N.C. 203, 90 S.E. 134 (1916).

**Same—Liability for Injuries.**—While it is negligence per se for one within the prohibited age to run an automobile, it is necessary that such negligence proximately cause the injury for damages to be recovered on that account, with the burden of proof on the plaintiff to show it by the preponderance of the evidence. *Taylor v. Stewart*, 172 N.C. 203, 90 S.E. 134 (1916).

**Same—Jury Question.**—It is for the jury to determine whether a competent and careful chauffeur of maturer years could have avoided the injury under the circumstances, or whether it was due to the fact that a lad within the prohibited age was running it at the time. *Taylor v. Stewart*, 172 N.C. 203, 90 S.E. 134 (1916).

**Same—Liability of Father.**—While ordi-

narily a father is not held responsible in damages for the negligent acts of his minor son done without his knowledge and consent, such may be inferred, as where the father constantly permitted his 13 year-old son to run his automobile. *Taylor v. Stewart*, 172 N.C. 203, 90 S.E. 134 (1916).

**Liability of Owner for Torts of Driver.**—See *Linville v. Nissen*, 162 N.C. 95, 77 S.E. 1096 (1913); *Cates v. Hall*, 171 N.C. 360, 88 S.E. 524 (1916); *Williams v. May*, 173 N.C. 78, 91 S.E. 604 (1917); *Wilson v. Polk*, 175 N.C. 490, 95 S.E. 849 (1918). For a complete treatment, see 2 N.C.L. Rev. 181.

**Same—Where Driver Is Son.**—See *Linville v. Nissen*, 162 N.C. 95, 77 S.E. 1096 (1913); *Clark v. Sweaney*, 176 N.C. 529, 97 S.E. 474 (1918). See also 2 N.C.L. Rev. 181.

**Instruction.** — An instruction to the effect that it would be negligence per se for defendant to permit his child under the legal driving age to operate his automobile but that defendant could not be held liable unless the jury found from the preponderance of the evidence that such negligence was the proximate or one of the proximate causes of the injury, was held sufficient to cover this aspect of the case. *Hoke v. Atlantic Greyhound Corp.*, 227 N.C. 412, 42 S.E.2d 593 (1947).

**§ 20-33. Unlawful to employ unlicensed chauffeur.**—No person shall employ any chauffeur to operate a motor vehicle who is not licensed as provided by this article. (1935, c. 52, s. 27.)

**§ 20-34. Unlawful to permit violations of this article.** — No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven by any person who has no legal right to do so or in violation of any of the provisions of this article. (1935, c. 52, s. 28.)

**§ 20-34.1. Unlawful to issue licenses for anything of value except prescribed fees.** — It shall be unlawful for any employee of the Department of Motor Vehicles to charge or accept any money or other thing of value except the fees prescribed by law for the issuance of an operator's or chauffeur's license, and the fact that the license is not issued after said employee charges or accepts money or other thing of value shall not constitute a defense to a criminal action under this section. In a prosecution under this section it shall not be a defense to show that the person giving the money or other thing of value or the person receiving the license or intended to receive the same is entitled to a license under the Uniform Driver's License Act. Any person violating this section shall be guilty of a felony and upon conviction shall be punished by imprisonment in the State's prison for not more than five years or by a fine of not more than five

thousand dollars (\$5,000.00) or by both such fine and imprisonment. (1951, c. 211.)

**Permitting Violation Is Negligence Per Se.** — Under this section it is negligence per se for the owner of a car or one having it under his control to permit a person under legal age to operate same, but such

negligence must be proximate cause of injury in order to be actionable. *Hoke v. Atlantic Greyhound Corp.*, 226 N.C. 692, 40 S.E.2d 345 (1946).

**§ 20-35. Penalties for misdemeanor.**—(a) It shall be a misdemeanor to violate any of the provisions of this article unless such violation is by this article or other law of this State declared to be a felony.

(b) Unless another penalty is in this article or by the laws of this State provided, every person convicted of a misdemeanor for the violation of any provision of this article shall be punished by a fine of not more than five hundred (\$500.00) dollars or by imprisonment for not more than six (6) months. (1935, c. 52, s. 29.)

Cited in *Hoke v. Atlantic Greyhound Corp.*, 226 N.C. 692, 40 S.E.2d 345 (1946).

**§ 20-36:** Repealed by Session Laws 1947, c. 1067, s. 11.

**§ 20-37. Limitations on issuance of licenses.** — There shall be no operator's or chauffeur's license issued within this State other than that provided for in this article, nor shall there be any other examination required: Provided, however, that cities and towns shall have the power to license, regulate and control drivers and operators of taxicabs within the city or town limits and to regulate and control operators of taxicabs operating between the city or town to points, not incorporated, within a radius of five miles of said city or town. (1935, c. 52, s. 34; 1943, c. 639, s. 2.)

**Editor's Note.**—For comment on the 1943 amendment, see 21 N.C.L. Rev. 358.

**Authority to License and Regulate Taxicabs.**—In adopting this section the General Assembly delegated the authority to license taxicabs and regulate their use on public streets to the several municipalities. *Suddreth v. Charlotte*, 223 N.C. 629, 27 S.E.2d 650 (1943).

In the exercise of this delegated power, it is the duty of the municipal authorities in their sound discretion, to determine what ordinances or regulations are reasonably necessary for the protection of the public or the better government of the town; and when in the exercise of such discretion an ordinance is adopted, it is

presumed to be valid; and, the courts will not declare it invalid unless it is clearly shown to be so. *State v. Stallings*, 230 N.C. 252, 52 S.E.2d 901 (1949).

Under such delegated power a city may require, as a condition incident to the privilege of operating a taxicab on its streets, that the driver of such taxicab shall wear a distinctive cap or other insignia while operating a taxicab, to show that he is a duly licensed taxicab driver. *State v. Stallings*, 230 N.C. 252, 52 S.E.2d 901 (1949).

Stated in *Victory Cab Co. v. Charlotte*, 234 N.C. 572, 68 S.E.2d 433 (1951).

Cited in *Morrissey v. Crabtree*, 143 F. Supp. 105 (M.D.N.C. 1956).

## ARTICLE 2A.

### *Operators' Licenses and Registration Plates for Afflicted or Disabled Persons.*

**§ 20-37.1. Motorized wheel chairs or similar vehicles.**—Any afflicted or disabled person who is qualified to operate a motorized wheel chair or other similar vehicle not exceeding one thousand pounds gross weight, may apply to the Department of Motor Vehicles for a special operator's license and permanent registration plates. When it is made to appear to the satisfaction of the Department of Motor Vehicles that the applicant is qualified to operate such vehicle, and is dependent upon such vehicle as a means of conveyance or as a means of earning a livelihood, said Department shall, upon the payment of a license fee of \$1.00 for each such motor vehicle, issue to such applicant for his exclusive per-

sonal use a special vehicle operator's license, which shall be renewed annually upon the payment of a fee of 50c, and permanent registration plates for such vehicle. The initial \$1.00 fee required by this section shall be in full payment of the permanent registration plates issued for such vehicle and such plates need not thereafter be renewed and such plates shall be valid only on the vehicle for which issued and then only while such vehicle is owned by the person to whom the plates were originally issued.

Any person other than the licensee who shall operate any motor vehicle equipped with any such special license plate as is authorized by this section shall be guilty of a misdemeanor and upon conviction subject to punishment in the discretion of the court. (1949, c. 143.)

### ARTICLE 3.

#### *Motor Vehicle Act of 1937.*

##### Part 1. General Provisions.

**§ 20-38. Definitions of words and phrases.**—The following words and phrases when used in this article shall, for the purpose of this article, have the meanings respectively prescribed to them in this section, except in those instances where the context clearly indicates a different meaning:

- (1) **Business District.**—The territory contiguous to a highway where seventy-five per cent or more of the frontage thereon for a distance of three hundred (300) feet or more is occupied by buildings in use for business purposes.
- (2) **Commissioner.**—Commissioner, when herein referred to, shall refer to the Commissioner of Motor Vehicles.
- (3) **Dealer.**—Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, trailers or semi-trailers in this State, having an established place of business in this State and being subject to the tax levied by § 105-89.
- (4) **Department.**—Department herein used shall mean the Department of Motor Vehicles acting directly or through its duly authorized officers and agents.
- (5) **Essential Parts.**—All integral and body parts of a vehicle of any type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.
- (6) **Established Place of Business.**—Means the place actually occupied by a dealer or manufacturer and at which a permanent business of bargaining, trading and selling motor vehicles is or will be carried on as such in good faith, and at which place of business shall be kept and maintained the books, records and files necessary and incident to the conduct of the business of automobile dealers or manufacturers.
- (7) **Explosives.** — Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combusive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by a detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous presses are capable of producing destructible effects on contiguous objects or of destroying life or limb.
- (8) **Farm Tractor.**—Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.



- (9) Foreign Vehicle. — Every vehicle of a type required to be registered hereunder brought into this State from another state, territory or country, other than in the ordinary course of business, by or through a manufacturer or dealer and not registered in this State.
- (10) House Trailer.—Any trailer or semi-trailer so designed and equipped as to provide living and/or sleeping facilities and drawn by a motor vehicle.
- (11) Implement of Husbandry.—Every vehicle which is designed for agricultural purposes and used exclusively in the conduct of agricultural operations.
- (12) Intersection.—The area embraced within the prolongation of the lateral curb lines or, if none, then the lateral boundary lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

Where a highway includes two roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event that such intersecting highway also includes two roadways thirty (30) feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

- (13) Local Authorities.—Every county, municipality, or other territorial district with local board or body having authority to adopt local police regulations under the Constitution and laws of this State.
- (14) Manufacturer.—Every person engaged in the business of manufacturing motor vehicles, trailers or semi-trailers.
- (15) Manufacturer's Certificate.—A certification, on a form approved by the Department of Motor Vehicles, signed by the manufacturer, indicating the name of the person or dealer to whom the therein described vehicle is transferred, the date of transfer and that such vehicle is the first transfer of such vehicle in ordinary trade and commerce. The description of the vehicle shall include the make, model, year, type of body, identification number or numbers, and such other information as the Department may require.
- (16) Metal Tire.—Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, non-resilient material.
- (17) Motor Vehicle.—Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle.
- (18) Nonresident.—Every person who is not a resident of this State.
- (19) Owner.—A person or persons holding the legal title of a vehicle; or, in the event a vehicle is the subject of a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the mortgagor, conditional vendee or lessee, said mortgagor, conditional vendee or lessee shall be deemed the owner for the purpose of this article. For the purposes of this article, the lessee of a vehicle owned by the government of the United States shall be considered the owner of said vehicle.
- (20) Passenger Vehicles.—a. Excursion passenger vehicles.  
Passenger vehicles kept in use for the purpose of transporting persons on sight-seeing or travel tours.  
b. For hire passenger vehicles.  
Passenger motor vehicles transporting passengers for com-

pensation; but this classification shall not include motor vehicles of nine-passenger capacity or less operated by the owner where the cost of operation is shared by neighbor fellow workmen between their homes and the place of regular daily employment, when operated for not more than two trips each way per day, nor shall this classification include automobiles operated by the owner where the cost of operation is shared by the passengers on a "share the expense" plan, nor shall this classification include motor vehicles transporting students for the public school system when said motor vehicles are so transporting under contract with the State Board of Education, nor shall this classification include motor vehicles leased to the United States of America or any of its agencies when such lease agreement is on a nonprofit basis.

c. Common carriers of passengers.

Passenger motor vehicles operated under a franchise certificate issued by the Utilities Commission under §§ 62-121.5 through 62-121.79, for operation on the public highways of this State between fixed termini or over a regular route for the transportation of persons or property for compensation.

d. Motorcycle.

Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

e. U-drive-it passenger vehicles.

Passenger motor vehicles used for the purpose of rent or lease to be operated by the lessee; provided, this shall not include passenger motor vehicles of nine passenger capacity or less which are leased for a term of one year or more to the same person, firm, or corporation. Provided, further that passenger vehicles leased or rented to public school authorities for the purpose of driver-training instruction shall not be included in this designation.

f. Private passenger vehicles.

All other passenger vehicles not included in the above definitions.

- (21) Person.—Every natural person, firm, co-partnership, association, corporation, or governmental agency.
- (22) Pneumatic Tire.—Every tire in which compressed air is designed to support the load.
- (23) Private Road or Driveway.—Every road or driveway not open to the use of the public as a matter of right for the purpose of vehicular traffic.
- (24) Property-Hauling Vehicles.—a. Contract carrier vehicles.

All motor vehicles used for the transportation of property for hire, but not licensed as common carriers of property under the provisions of §§ 62-121.5 through 62-121.79; provided, that motor vehicles operating as interstate common carriers of property under authority of the Interstate Commerce Commission shall be registered as contract carrier vehicles if they do contract property-hauling in North Carolina; provided, that the term "for hire" as used herein shall include every arrangement by which the owner of a motor vehicle uses, or permits such vehicle to be used, for the transportation of the property of another for compensation, subject to the following exemptions:

- 1. The transportation of farm crops or products, including

logs, bark, pulp and tannic acid wood delivered from farms and forest to the first or primary market, and the transportation of wood chips from the place where wood has been converted into chips to their first or primary market.

2. The transportation of perishable foods which are still owned by the grower while being delivered to the first or primary market by an operator who has not more than one truck, truck-tractor or trailer in a for hire operation.
3. The transportation of merchandise hauled for neighborhood farmers incidentally and not as regular business in going to and from farms and primary markets.
4. The transportation of T.V.A. or A.A.A. phosphate and/or agricultural limestone in bulk which is furnished as a grant of aid under the United States Agricultural Adjustment Administration.
5. The transportation of fuel for the exclusive use of the public schools of the State.
6. Motor vehicles whose sole operation in carrying the property of others is limited to the transportation of the United States mail pursuant to a contract made with the United States or the extension or renewal of such contract.
7. Vehicles which are leased for a term of one year or more to the same person, firm or corporation when used exclusively by such person, firm or corporation in transporting its own property.

b. Common carrier of property vehicles.

Every motor vehicle used for the transportation of property which is certified a common carrier by the Utilities Commission or the Interstate Commerce Commission.

c. Private hauler vehicles.

All motor vehicles used for the transportation of property not falling within one of the above defined classifications; provided, self-propelled vehicles equipped with permanent living and sleeping facilities used exclusively for camping activities shall be classified as private passenger vehicles.

d. Semi-trailer.

Every vehicle without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of its weight and/or its load rests upon or is carried by the pulling vehicle.

e. Trailers.

Every vehicle without motive power designed for carrying property or persons wholly on its own structure and to be drawn by a motor vehicle. This shall include so-called pole trailers or a pair of wheels used primarily to balance a load, rather than for purposes of transportation.

- (25) Reconstructed Vehicle.—Every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.
- (26) Resident. — As to individuals, every person who is a resident of this State and the fact that such person leaves the State temporarily shall not be sufficient to terminate his residence here. Any person who leaves this State shall be presumed to continue to be a resident of this State if his family continues to reside in this State or his children continue



- to attend school in this State, or if his dwelling in this State is maintained by him as a place of occupancy which is not used by parties other than members of his family.
- (27) Residential District.—The territory contiguous to a highway not comprising a business district, where seventy-five per cent or more of the frontage thereon for a distance of three hundred (300) feet or more is mainly occupied by dwellings or by dwellings and buildings in use for business purposes.
- (28) Road Tractor.—Every motor vehicle designed and used for drawing other vehicles upon the highway and not so constructed as to carry any part of the load, either independently or as a part of the weight of the vehicle so drawn.
- (29) Roadway.—That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term “roadway” as used herein shall refer to any such roadway separately but not to all such roadways collectively.
- (30) Safety Zone.—The area or space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.
- (31) Security Agreement.—A written agreement which reserves or creates a security interest.
- (32) Security Interest.—An interest in a vehicle reserved or created by agreement and which secures payments or performance of an obligation. The term includes but is not limited to the interest of a chattel mortgagee, the interest of a vendor under a conditional sales contract, the interest of a trustee under a chattel deed of trust, and the interest of a lessor under a lease intended as security. A security interest is “perfected” when it is valid against third parties generally.
- (33) Solid Tire.—Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.
- (34) Specially Constructed Vehicles.—Every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.
- (35) Special Mobile Equipment.—Every truck, truck-tractor, trailer or semi-trailer on which have been permanently attached cranes, mills, well boring apparatus, ditch digging apparatus, air compressors, electric welders or any similar type apparatus or which have been converted into living or office quarters, or other self-propelled vehicles which were originally constructed in a similar manner which are operated on the highway only for the purpose of getting to and from a non-highway job and not for the transportation of persons or property or for hire. This shall also include trucks on which special equipment has been mounted and used by American Legion or Shrine Temples for parade purposes, trucks or vehicles privately owned on which fire-fighting equipment has been mounted and which are used only for fire-fighting purposes, and vehicles on which are permanently mounted feed mixers, grinders and mills although there is also transported on the vehicle molasses or other similar type feed additives for use in connection with the feed mixing, grinding or milling process.
- (36) Street and Highway.—The entire width between property lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic.

- (37) **Truck Tractor.**—Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry any load independent of the vehicle so drawn.
- (38) **Vehicle.**—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this article bicycles shall be deemed vehicles, and every rider of a bicycle upon a highway shall be subject to the provisions of this article applicable to the driver of a vehicle except those which by their nature can have no application.
- (39) **Wreckers.**—Every motor vehicle whose sole operation is moving disabled motor vehicles of an emergency nature to the nearest feasible point for repairs and/or storage and on which have been permanently attached cranes and are not so constructed to haul other property. Provided, further, that said wreckers shall be equipped with adequate brakes for units being towed. (1937, c. 407, s. 2; 1939, c. 275; 1941, cc. 22, 36, 196; 1943, cc. 201, 202; 1945, c. 414, s. 1; cc. 653, 838; 1947, c. 220, s. 1; 1949, cc. 814, 1287; 1951, c. 571; c. 705, s. 1; c. 770; c. 819, ss. 1, 2; c. 1023, s. 1; 1953, c. 472; c. 826, s. 1; c. 831, ss. 1, 2; c. 914; 1957, cc. 1087, 1150, 1231; 1959, c. 19; c. 1264, ss. 1.5, 11; 1961, c. 835, s. 1; c. 1172, s. 1; 1963, c. 435; c. 702, s. 1; 1965, c. 83; c. 678, s. 1; c. 1025.)

**Editor's Note.** — For comment on the 1941 amendments, see 19 N.C.L. Rev. 514.

For comment on the 1943 amendments, see 21 N.C.L. Rev. 356.

The first 1963 amendment added the proviso to the sentence under paragraph c of subdivision (24). The second 1963 amendment added subdivision (39).

The first 1965 amendment added at the end of paragraph b of subdivision (20) the provision as to motor vehicles leased to the United States.

The second 1965 amendment added subdivision (29).

The third 1965 amendment added the provision pertaining to transportation of wood chips in paragraph a1 of subdivision (24).

**Handcart Not Vehicle.**—A handcart, being moved solely by human power, is excluded from the category of vehicles defined in subdivision (38) of this section. *Lewis v. Watson*, 229 N.C. 20, 47 S.E.2d 484 (1948).

**"Auto Truck" Defined as Automobile.**—See *Bethlehem Motors Corp. v. Flynt*, 178 N.C. 399, 100 S.E. 693 (1919).

**Motorcycle.**—Statutory definition cited in *Anderson v. Life & Cas. Ins. Co.*, 197 N.C. 72, 147 S.E. 693 (1929), holding that the expression "motor driven car" in an insurance policy excludes a motorcycle.

The definition of the term "motorcycle" in this section does not describe the "mailster," a class of motor vehicle generally known as a "motor scooter." *LeCroy v. Nationwide Mut. Ins. Co.*, 251 N.C. 19, 110 S.E.2d 463 (1959).

The definition of the term "motorcycle" in this section is for regulation of license fees and has no application in an action based on an insurance contract's interpretation of word "automobile." *LeCroy v. Nationwide Mut. Ins. Co.*, 251 N.C. 19, 110 S.E.2d 463 (1959).

**Farm Tractor.** — Construing the definitions of "farm tractor" and "vehicle" together in pari materia it is apparent that the General Assembly intended that while farm tractors are motor implements of husbandry, they are vehicles within the meaning of § 20-138 when operated upon a highway by one under the influence of intoxicating liquor or narcotic drugs. *State v. Green*, 251 N.C. 141, 110 S.E.2d 805 (1959).

**Intersection.**—Under this section where one public highway joins another, but does not cross it, the point where they join is an intersection of public highways. *Goss v. Williams*, 196 N.C. 213, 145 S.E. 169 (1928).

When the failure to explain the law so the jury could apply it to the facts is specifically called to the court's attention by a juror's request for information, it should tell the jury how to find the intersection of the streets as fixed by subdivision (12) of this section and how, when the motorist reaches the intersection, he is required to drive in making a left turn. *Pearsall v. Duke Power Co.*, 258 N.C. 639, 129 S.E.2d 217 (1963).

**Bicycle.**—Under this section a bicycle is deemed a vehicle, and the rider of a bicycle upon the highway is subject to the ap-

plicable provisions of the statutes relating to motor vehicles. *Van Dyke v. Atlantic Greyhound Corp.*, 218 N.C. 283, 10 S.E.2d 727 (1940).

A bicycle is a vehicle and is subject to provisions of this article, except those which by their nature can have no application. *Tarrant v. Pepsi-Cola Bottling Co.*, 221 N.C. 390, 20 S.E.2d 565 (1942); *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

**Portion of Sidewalks as Highways.**—The portion of a sidewalk between a street and a filling station, open to the use of the public as a matter of right for the purposes of vehicular traffic, is a "highway" within the meaning of § 20-138 prohibiting drunken driving. *State v. Perry*, 230 N.C. 361, 53 S.E.2d 288 (1949).

**Residential District.**—A charge defining a "residential district" as being "the territory contiguous to a highway, not comprising a business district, when the frontage on the highway for a distance of 300 feet or more is mainly occupied by dwellings and buildings in use for business" is held without error, the definition of a residential district in c. 148, Public Laws of 1927, art. 1, s. 1 (s), not having been repealed by this section. *Reid v. City Coach Co.*, 215 N.C. 469, 2 S.E.2d 578, 123 A.L.R. 140 (1939). But note 1939 amendment adding subdivision (27).

Where the evidence established that the scene of the accident was not in a business district, and there was no evidence that defendant's vehicle was being driven in excess of 20 miles an hour, whether the accident occurred in a residential district as defined by subdivision (27) of this section, was held immaterial, since such speed did not violate the statutory restriction. *Mitchell v. Melts*, 220 N.C. 793, 18 S.E.2d 406 (1942).

That part of a highway comprising an intersection may not properly be considered in applying subdivision (27) of this section to any given locality. *Mitchell v. Melts*, 220 N.C. 793, 18 S.E.2d 406 (1942).

Where there is testimony that the accident in suit occurred along a highway in a thickly populated area with residence and business establishments fronting thereon, at least some residences being side by side, the court is required to submit to the jury the question of whether the area was a residential district as defined by this section. *Goddard v. Williams*, 251 N.C. 128, 110 S.E.2d 820 (1959).

**Business District.**—Uncontradicted testimony that only two business buildings front on the street in the block in which

the accident occurred and that both of them together comprise not more than 40 feet frontage, establishes as a matter of law that the locus in quo is not a business district as defined by subdivision (1) of this section. *Mitchell v. Melts*, 220 N.C. 793, 18 S.E.2d 406 (1942).

**A business district is to be determined on the basis of frontage actually occupied by buildings when their side lines are projected or extended to the street or highway, without taking into consideration the open spaces between the buildings, notwithstanding such spaces may be used for business purposes or incident to the operation of a business establishment.** *Hinson v. Dawson*, 241 N.C. 714, 86 S.E.2d 585 (1955).

**Frontage on Both Sides of Street Need Not Be Used for Business Purposes.**—A district is a business district within the purview of subdivision (1) if 75% or more of the frontage for a distance of 300 feet or more on either side of the street or highway is occupied by buildings in use for business purposes, and it is not required that the frontage on both sides of the street or highway should be so used. *Hinson v. Dawson*, 241 N.C. 714, 86 S.E.2d 585 (1955).

**And Conditions on Intersecting Streets Are Not Considered.**—Whether a motorist is traveling in a business district within the purview of subdivision (1) is to be determined with reference to the frontage along the street or highway on which he is traveling, and conditions along intersecting streets or highways are to be excluded from consideration. *Hinson v. Dawson*, 241 N.C. 714, 86 S.E.2d 585 (1955).

A "business district" is determinable with reference to the status of the frontage on the street or highway on which the motorist is traveling. Conditions along intersecting streets or highways are excluded from consideration. *Black v. Penland*, 255 N.C. 691, 122 S.E.2d 504 (1961).

**A building used for business purposes need not be in actual contact with the front property line, but fronts upon the street or highway within the purview of subdivision (1) if the space intervening between the front of the building and the front property line and used as a means of access to the building is reasonable in extent.** *Hinson v. Dawson*, 241 N.C. 714, 86 S.E.2d 585 (1955).

**Vehicles Leased for One Year or More.**—While it is true that paragraph 7 of subdivision (24) a of this section was set



out for the first time among the list of exemptions by Session Laws 1953, c. 831, it is also true that the act in its caption spelled out the intent and purpose of the act, which was to "rewrite the definition of owner of motor vehicles and contract carrier vehicles so as to clarify the licensing procedure for leased vehicles." To clarify does not mean to add, or to take from, but "to make clear." Therefore, the contention that the exemption existed under the statute prior to the 1953 amendment was held to have merit. *Equipment Fin. Corp. v. Scheidt*, 249 N.C. 334, 106 S.E.2d 555 (1959).

Where the owner of trucks leased them to another corporation under an agreement requiring lessor to carry insurance and maintain the vehicles and giving lessee control over the operation of the trucks with right to use same exclusively for the transportation and delivery of lessee's goods, the lessor was not a contract carrier within the meaning of this section and § 62-121.7 as they stood in 1949, since the lessor merely leased its vehicles and was not a carrier of any kind, and lessee was solely a private carrier, and therefore lessor was not liable for additional assessment at the "for hire" rates under the statute. *Equipment Fin. Corp. v. Scheidt*, 249 N.C. 334, 106 S.E.2d 555 (1959).

Applied in *State v. Brooks*, 210 N.C. 273, 186 S.E. 237 (1936); *Kelly v. Hunsucker*, 211 N.C. 153, 189 S.E. 664 (1937); *Wooten v. Smith*, 215 N.C. 48, 200 S.E. 921 (1939); *Sparks v. Willis*, 228 N.C. 25,

44 S.E.2d 343 (1947) (as to subdivisions (1) and (23)); *Jenkins v. Thomas*, 260 N.C. 768, 133 S.E.2d 694 (1963); *Nix v. Earley*, 263 N.C. 795, 140 S.E.2d 402 (1965).

Quoted in *Morrissey v. Crabtree*, 143 F. Supp. 105 (M.D.N.C. 1956); *Shoe v. Hood*, 251 N.C. 719, 112 S.E.2d 543 (1960).

Stated in *Rick v. Murphy*, 251 N.C. 162, 110 S.E.2d 815 (1959).

Cited in *Latham v. Elizabeth City Orange Crush Bottling Co.*, 213 N.C. 158, 195 S.E. 372 (1938); *Bass v. Hocutt*, 221 N.C. 218, 19 S.E.2d 871 (1942); *Bobbitt v. Haynes*, 231 N.C. 373, 57 S.E.2d 361 (1950); *Jernigan v. Hanover Fire Ins. Co.*, 235 N.C. 334, 69 S.E.2d 847 (1952); *Hawes v. Atlantic Ref. Co.*, 236 N.C. 643, 74 S.E.2d 17 (1953); *State v. Smith*, 238 N.C. 82, 76 S.E.2d 363 (1953) (as to subdivision (38)); *Medlin v. Spurrier & Co.*, 239 N.C. 48, 79 S.E.2d 209 (1953) (as to subdivision (23)); *Hudson v. Petroleum Transit Co.*, 250 N.C. 435, 108 S.E.2d 900 (1959); *Pruett v. Inman*, 252 N.C. 520, 114 S.E.2d 360 (1960); *C. C. T. Equip. Co. v. Hertz Corp.*, 256 N.C. 277, 123 S.E.2d 802 (1962) (as to subdivisions (23) and (36)); *Griffin v. Pancoast*, 257 N.C. 52, 125 S.E.2d 310 (1962) (as to subdivision (12)); *Hensley v. Wallen*, 257 N.C. 675, 127 S.E.2d 277 (1962) (as to subdivisions (1) and (23)); *Boykin v. Bissette*, 260 N.C. 295, 132 S.E.2d 616 (1963); *Parlier v. Barnes*, 260 N.C. 341, 132 S.E.2d 684 (1963); *Reeves v. Campbell*, 264 N.C. 224, 141 S.E.2d 296 (1965).

## Part 2. Authority and Duties of Commissioner and Department.

**§ 20-39. Administering and enforcing laws; rules and regulations; agents, etc.; seal.**—(a) The Commissioner is hereby vested with the power and is charged with the duty of administering and enforcing the provisions of this article and of all laws regulating the operation of vehicles or the use of the highways, the enforcement or administration of which is now or hereafter vested in the Department.

(b) The Commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this article and any other laws the enforcement and administration of which are vested in the Department.

(c) The Commissioner is authorized to designate and appoint such agents, field deputies, and clerks as may be necessary to carry out the provisions of this article.

(d) The Commissioner shall adopt an official seal for the use of the Department. (1937, c. 407, s. 4.)

**Cross Reference.**—As to Commissioner and organization of Department, see §§ 20-2, 20-3.

**§ 20-40. Offices of Department.** — The Commissioner shall maintain an office in Raleigh, North Carolina, and in such places in the State as he shall

deem necessary to properly carry out the provisions of this article. (1937, c. 407, s. 5.)

**§ 20-41. Commissioner to provide forms required.**—The Commissioner shall provide suitable forms for applications, certificates of title and registration cards, registration number plates and all other forms requisite for the purpose of this article, and shall prepay all transportation charges thereon. (1937, c. 407, s. 6.)

**§ 20-42. Authority to administer oaths and certify copies of records.**—(a) Officers and employees of the Department designated by the Commissioner are, for the purpose of administering the motor vehicles laws, authorized to administer oaths and acknowledge signatures, and shall charge for the acknowledgment of signatures a fee according to the following schedule:

- |  |        |
|--|--------|
| (1) One (1) signature .....            | \$ .50 |
| (2) Two (2) signatures .....           | .75    |
| (3) Three (3) or more signatures ..... | 1.00   |

Funds received under the provisions of this subsection shall be used to defray a part of the costs of distribution of license plates, registration certificates and certificates of title issued by the Department.

(b) The Commissioner and such officers of the Department as he may designate are hereby authorized to prepare under the seal of the Department and deliver upon request a certified copy of any record of the Department, charging a fee of fifty cents (50¢) for each document so certified, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. (1937, c. 407, s. 7; 1955, c. 480; 1961, c. 861, s. 1.)

**Cross Reference.**—As to copy of record kept by Commissioner, etc., certified by Commissioner, as evidence, see § 8-37. **Cited in** State v. Corl, 250 N.C. 252, 108 S.E.2d 608 (1959); State v. Knight, 261 N.C. 17, 134 S.E.2d 101 (1964).

**Applied in** State v. Moore, 247 N.C. 368, 101 S.E.2d 26 (1957).

**§ 20-43. Records of Department.**—(a) All records of the Department, other than those declared by law to be confidential for the use of the Department, shall be open to public inspection during office hours.

(b) The Commissioner may destroy any registration records of the Department which have been maintained on file for three years which he may deem obsolete and of no further service in carrying out the powers and duties of the Department.

(c) The Commissioner, upon receipt of notification from another state or foreign country that a certificate of title issued by the Department has been surrendered by the owner in conformity with the laws of such other state or foreign country, may cancel and destroy such record of certificate of title. (1937, c. 407, s. 8; 1947, c. 219, s. 1.)

**§ 20-44. Authority to grant or refuse applications.**—The Department shall examine and determine the genuineness, regularity and legality of every application for registration of a vehicle and for a certificate of title therefor, and of any other application lawfully made in the Department, and may in all cases make investigation as may be deemed necessary or require additional information, and shall reject any such application if not satisfied of the genuineness, regularity, or legality thereof or the truth of any statement contained therein, or for any other reason, when authorized by law. (1937, c. 407, s. 9.)

**§ 20-45. Seizure of documents and plates.**—The Department is hereby authorized to take possession of any certificate of title, registration card, permit, license, or registration plate issued by it upon expiration, revocation, cancella-

tion, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued, or which has been unlawfully used. (1937, c. 407, s. 10.)

**§ 20-46. Distribution of synopsis of laws.**—The Department may publish a synopsis or summary of the laws of this State regulating the operation of vehicles, and deliver to any person on request a copy thereof without charge. (1937, c. 407, s. 11.)

**§ 20-47. Department may summon witnesses and take testimony.**—(a) The Commissioner and officers of the Department designated by him shall have authority to summon witnesses to give testimony under oath or to give written deposition upon any matter under the jurisdiction of the Department. Such summons may require the production of relevant books, papers, or records.

(b) Every such summons shall be served at least five days before the return date, either by personal service made by any person over eighteen years of age or by registered mail, but return acknowledgment is required to prove such latter service. Failure to obey such a summons so served shall constitute a misdemeanor. The fees for the attendance and travel of witnesses shall be the same as for witnesses before the superior court.

(c) The superior court shall have jurisdiction, upon application by the Commissioner, to enforce all lawful orders of the Commissioner under this section. (1937, c. 407, s. 12.)

**Cross References.**—As to misdemeanors scribed, see § 14-3. As to fees of witnesses for which no specific punishment is pre- generally, see § 6-52.

**§ 20-48. Giving of notice.**—Whenever the Department is authorized or required to give any notice under this chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Department. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by the certificate of any officer or employee of the Department or affidavit of any person over twenty-one years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof. (1937, c. 407, s. 13; 1955, c. 1187, s. 21.)

**§ 20-49. Police authority of Department.**—The Commissioner and such officers and inspectors of the Department as he shall designate and all members of the Highway Patrol shall have the power:

- (1) Of peace officers for the purpose of enforcing the provisions of this article and of any other law regulating the operation of vehicles or the use of the highways.
- (2) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of this article or other laws regulating the operation of vehicles or the use of the highways.
- (3) At all time to direct all traffic in conformance with law, and in the event of a fire or other emergency or to expedite traffic or to insure safety, to direct traffic as conditions may require, notwithstanding the provisions of law.
- (4) When on duty, upon reasonable belief that any vehicle is being operated in violation of any provision of this article or of any other law regulating the operation of vehicles to require the driver thereof to stop and exhibit his driver's license and the registration card issued for the vehicle, and submit to an inspection of such vehicle, the registration



plates and registration card thereon or to an inspection and test of the equipment of such vehicle.

- (5) To inspect any vehicle of a type required to be registered hereunder in any public garage or repair shop or in any place where such vehicles are held for sale or wrecking, for the purpose of locating stolen vehicles and investigating the title and registration thereof.
- (6) To serve all warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways.
- (7) To investigate traffic accidents and secure testimony of witnesses or of persons involved.
- (8) To investigate reported thefts of motor vehicles, trailers and semi-trailers.
- (9) For the purpose of determining compliance with the provisions of this chapter, to inspect all files and records of the persons hereinafter designated and required to be kept under the provisions of this chapter or of the registrations of the Department:
  - a. Persons dealing in or selling and buying new, used or junked motor vehicles and motor vehicle parts; and
  - b. Persons operating garages or other places where motor vehicles are repaired, dismantled, or stored. (1937, c. 407, s. 14; 1955, c. 554, s. 1.)

### Part 3. Registration and Certificates of Titles of Motor Vehicles.

§ 20-50. **Owner to secure registration and certificate of title.**—Except as otherwise provided in this article, every owner of a vehicle intended to be operated upon any highway of this State and required by this article to be registered shall, before the same is so operated, apply to the Department for and obtain the registration thereof, the registration plates therefor and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and nonresidents contained in § 20-79, or under temporary registration plates as provided in this article: Provided that the Commissioner of Motor Vehicles or his duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good cause being shown. It is further provided that when the owner of a vehicle leases such vehicle to a common carrier of passengers or property and it is actually used by such common carrier in the operation of its business, the registration plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Department and file such evidence of the lease as the Department may require. (1937, c. 407, s. 15; 1943, c. 648; 1945, c. 956, s. 3; 1947, c. 219, s. 2; 1953, c. 831, s. 3; 1957, c. 246, s. 2; 1961, c. 360, s. 1; 1963, c. 552, s. 1.)

**Editor's Note.** — The 1963 amendment deleted a proviso exempting certain trailers from the requirement of a certificate of title.

**Mortgage registration statute** compared with prior similar statute. See *Carolina Discount Corp. v. Landis Motor Co.*, 190 N.C. 157, 129 S.E. 414 (1925).

**Applied in** *Hawkins v. M & J Fin. Corp.*, 238 N.C. 174, 77 S.E.2d 669 (1953).

**Stated in** *Southern Auto Fin. Co. v. Pittman*, 253 N.C. 550, 117 S.E.2d 423 (1960); *Pilot Freight Carriers, Inc. v. Scheidt*, 263 N.C. 737, 140 S.E.2d 383 (1965).

**Cited in** *Community Credit Co. of Le-noir, Inc. v. Norwood*, 257 N.C. 87, 125 S.E.2d 369 (1962).

§ 20-51. **Exempt from registration.** — The following shall be exempt from the requirement of registration and certificate of title:

- (1) Any such vehicle driven or moved upon a highway in conformance with

the provisions of this article relating to manufacturers, dealers, or non-residents.

- (2) Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.
- (3) Any implement of husbandry, farm tractor, road construction or maintenance machinery or other vehicle which is not self-propelled that was designed for use in work off the highway and which is operated on the highway for the purpose of going to and from such non-highway projects.
- (4) Any vehicle owned and operated by the government of the United States.
- (5) Farm tractors equipped with rubber tires and trailers or semi-trailers when attached thereto and when used by a farmer, his tenant, agent, or employee in transporting his own farm implements, farm supplies, or farm products from place to place on the same farm, from one farm to another, from farm to market, or from market to farm. This exemption shall extend also to any tractor and trailer or semi-trailer while on any trip within a radius of ten miles from the point of loading. This section shall not be construed as granting any exemption to farm tractors and trailers or semi-trailers which are operated on a for-hire basis, whether money or some other thing of value is paid or given for the use of such tractors and trailers or semi-trailers.
- (6) Any trailer or semi-trailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in transporting unginced cotton, peanuts, silage, or irrigation pipes and equipment owned by such farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis.
- (7) Those small farm trailers known generally as tobacco handling trailers, tobacco trucks or tobacco trailers when used by a farmer, his tenant, agent or employee, when transporting or otherwise handling tobacco in connection with the pulling, tying or curing thereof. (1937, c. 407, s. 16; 1943, c. 500; 1949, c. 429; 1951, c. 705, s. 2; 1953, c. 826, ss. 2, 3; c. 1316, s. 1; 1961, cc. 334, 817; 1963, c. 145; 1965, c. 1146.)

**Cross References.**—As to manufacturers and dealers, see § 20-79. As to nonresidents, see § 20-83.

**Editor's Note.** — The 1963 amendment inserted "peanuts" and "from farm to dryer" in subdivision (6).

The 1965 amendment included irrigation pipes and equipment in subdivision (6).

**Farm tractors are not to be considered motor vehicles** within the statute relating to the registration and certificates of titles of motor vehicles. *Brown v. Fidelity & Cas. Co.*, 241 N.C. 666, 86 S.E.2d 433 (1955).

**Cited in** *Hawkins v. M & J Fin. Corp.*, 238 N.C. 174, 77 S.E.2d 669 (1953).

**§ 20-52. Application for registration and certificate of title.** — (a) Every owner of a vehicle subject to registration hereunder shall make application to the Department for the registration thereof and issuance of a certificate of title for such vehicle upon the appropriate form or forms furnished by the Department, and every such application shall bear the signature of the owner written with pen and ink, and said signature shall be acknowledged by the owner before a person authorized to administer oaths, and said application shall contain:

- (1) The name, bona fide residence and mail address of the owner or business address of the owner if a firm, association or corporation;
- (2) A description of the vehicle, including, insofar as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the serial number of the vehicle, the engine and other identifying numbers of the vehicle and whether new or used, and if a new vehicle, the date of sale and actual date of delivery of vehicle

by the manufacturer or dealer to the person intending to operate such vehicle;

(3) A statement of the applicant's title and of all liens or encumbrances upon said vehicle and the names and addresses of all lien holders in the order of their priority, and the amount, date and nature of the security agreement;

(4) Such further information as may reasonably be required by the Department to enable it to determine whether the vehicle is lawfully entitled to registration and the owner entitled to a certificate of title.

(b) When such application refers to a new vehicle purchased from a manufacturer or dealer, such application shall be accompanied with a manufacturer's certificate of origin that is properly assigned to the applicant. If the new vehicle is acquired from a dealer or person located in another jurisdiction other than a manufacturer, the application shall be accompanied with such evidence of ownership as is required by the laws of that jurisdiction duly assigned by the disposer to the purchaser, or, if no such evidence of ownership be required by the laws of such other jurisdiction, a notarized bill of sale from the disposer. (1937, c. 407, s. 17; 1961, c. 835, ss. 2, 3.)

**Cited in** Community Credit Co. of Le-noir, Inc. v. Norwood, 257 N.C. 87, 125 S.E.2d 369 (1962).

**§ 20-52.1. Manufacturer's certificate of transfer of new motor vehicle.**—(a) Any manufacturer transferring a new motor vehicle to another shall, at the time of the transfer, supply the transferee with a manufacturer's certificate of origin assigned to the transferee.

(b) Any dealer transferring a new vehicle to another dealer shall, at the time of transfer, give such transferee the proper manufacturer's certificate assigned to the transferee.

(c) Any dealer transferring a new vehicle to a consumer-purchaser shall, at the time of transfer, give the purchaser the proper manufacturer's certificate assigned to the transferee. (1961, c. 835, s. 4.)

**§ 20-53. Application for specially constructed, reconstructed, or foreign vehicle.**—(a) In the event the vehicle to be registered is a specially constructed, reconstructed, or foreign vehicle, such fact shall be stated in the application, and with reference to every foreign vehicle which has been registered outside of this State, the owner shall surrender to the Department all registration cards and certificates of title or other evidence of such foreign registration as may be in his possession or under his control, except as provided in subsection (b) hereof.

(b) Where, in the course of interstate operation of a vehicle registered in another state, it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender, but shall submit for inspection said evidence of such foreign registration, and the Department in its discretion, and upon a proper showing, shall register said vehicle in this State but shall not issue a certificate of title for such vehicle.

(c), (d): Repealed by Session Laws 1965, c. 734, s. 2, effective Feb. 16, 1966. (1937, c. 407, s. 18; 1949, c. 675; 1953, c. 853; 1957, c. 1355; 1965, c. 734, s. 2.)

**Editor's Note.** — The 1965 amendment, For comment on former subsection (c), effective Feb. 16, 1966, repealed subsections see 27 N.C.L. Rev. 471. (c) and (d), which related to the inspection and certification of foreign vehicles before registration.

**§ 20-54. Authority for refusing registration or certificate of title.**—The Department shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) That the application contains any false or fraudulent statement or that the



applicant has failed to furnish required information or reasonable additional information requested by the Department or that the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this article;

- (2) That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways;
- (3) That the Department has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or other person having valid lien upon such vehicle;
- (4) That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State;
- (5) That the required fee has not been paid. (1937, c. 407, s. 19.)

**Cross Reference.** — As to fees, see § 20-85.

**§ 20-55. Examination of registration records and index of stolen and recovered vehicles.**—The Department, upon receiving application for any transfer of registration or for original registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall first check the engine and serial numbers shown in the application against the indexes of registered motor vehicles, and against the index of stolen and recovered motor vehicles required to be maintained by this article. (1937, c. 407, s. 20.)

**§ 20-56. Registration indexes.** — The Department shall file each application received, and when satisfied as to the genuineness and regularity thereof, and that the applicant is entitled to register such vehicle and to the issuance of a certificate of title, shall register the vehicle therein described and keep a record thereof in suitable books or on index cards as follows:

- (1) Under a distinctive registration number assigned to the vehicle;
- (2) Alphabetically, under the name of the owner;
- (3) Under the motor number or any other identifying number of the vehicle; and
- (4) In the discretion of the Department, in any other manner it may deem advisable. (1937, c. 407, s. 20½; 1949, c. 583, s. 5.)

**Stated in** *Hawkins v. M & J Fin. Corp.*,  
238 N.C. 174, 77 S.E.2d 669 (1953).

**§ 20-57. The Department to issue certificate of title and registration card.**—(a) The Department upon registering a vehicle shall issue a registration card and a certificate of title as separate documents.

(b) The registration card shall be delivered to the owner and shall contain upon the face thereof the name and address of the owner, space for owner's signature, the registration number assigned to the vehicle, and such description of the vehicle as determined by the Commissioner, and upon the reverse side a form for endorsement of notice to the Department upon transfer of the vehicle. Upon application to the Department, the registered owner may acquire additional copies of the registration card at a fee of fifty cents (50¢) each.

(c) Every owner upon receipt of a registration card, shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers or in the vehicle to which transfer is being effected, as provided by G.S. 20-64 at the time of its operation, and such registration card shall be displayed upon demand of any peace officer or any officer of the Department: Provided, however, any person charged with failing to so carry such registration card shall not be convicted if he produces in court a registration card theretofore issued to him and valid at the time of his arrest: Provided further, that in case of a transfer of a license plate from one

vehicle to another under the provisions of G.S. 20-72, evidence of application for transfer shall be carried in the vehicle in lieu of the registration card.

(d) The certificate of title shall contain upon the face thereof the identical information required upon the face of the registration card and in addition there to the date of issuance and all liens or encumbrances disclosed in the application for title. All such liens or encumbrances shall be shown in the order of their priority, according to the information contained in such application.

(e) The certificate of title shall also contain upon the reverse side form of assignment of title or interest and warranty thereof, with space for notation of liens and encumbrances upon such vehicle at the time of a transfer.

(f) Certificates of title upon which liens or encumbrances are shown shall be delivered or mailed by the Department to the holder of the first lien or encumbrance.

(g) Certificates of title shall bear thereon the seal of the Department.

(h) Certificates of title need not be renewed annually, but shall remain valid until canceled by the Department for cause or upon a transfer of any interest shown therein. (1937, c. 407, s. 21; 1943, c. 715; 1961, c. 360, s. 2; c. 835, s. 5; 1963, c. 552, s. 2.)

**Editor's Note.** — The 1963 amendment added the second sentence of subsection (b) and the second proviso to subsection (c).

**Cited in** *Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N.C. 87, 125 S.E.2d 369 (1962).

**Stated in** *Hawkins v. M & J Fin. Corp.*, 238 N.C. 174, 77 S.E.2d 669 (1953).

**§ 20-58. Perfection of security interests generally.**—(a) Except as provided in G.S. 20-58.9, a security interest in a vehicle of a type for which a certificate of title is required is not valid against creditors of the owner or subsequent transferees or lien holders of the vehicle unless perfected as provided in this chapter.

(b) A security interest is perfected by delivery to the Department of the existing certificate of title if the vehicle has been previously registered in this State, and if not, an application for a certificate of title containing the name and address of the lien holder, the date, amount and nature of his security agreement, and the required fee. The lien is perfected as of the time of its creation if the delivery of the certificate or application to the Department is completed within ten days thereafter, otherwise it is perfected as of the time of delivery.

(c) If a vehicle is subject to a security interest when brought into this State, the validity of the security interest is determined by the law of the jurisdiction where the vehicle was when the security interest attached, subject to the following:

- (1) If the vehicle is purchased for use and registration in North Carolina, the validity of the security interest in this State is determined by the law of this State.
- (2) If the security interest was perfected under the law of the jurisdiction where the vehicle was when the security interest attached, the following rules apply:
  - a. If the name of the lien holder is shown on an existing certificate of title issued by that jurisdiction, his security interest continues perfected in this State.
  - b. If the name of the lien holder is not shown on an existing certificate of title issued by that jurisdiction, the security interest continues perfected in this State for four months after vehicle is brought into this State, and also, thereafter if, within the four-month period, it is perfected in this State. The security interest may also be perfected in this State after the

expiration of the four-month period; in that case perfection dates from the time of perfection in this State.

- (3) If the security interest was not perfected under the law of the jurisdiction where the vehicle was when the security interest attached, it may be perfected in this State; in that case, perfection dates from the time of perfection in this State. (1937, c. 407, s. 22; 1955, c. 554, s. 2; 1961, c. 835, s. 6.)

**Editor's Note.**—The 1961 amendment struck out former § 20-58, relating to release by lien holder to owner, and inserted in lieu thereof the present section and §§ 20-58.1 through 20-58.10.

**The 1961 amendatory act made extensive changes** in the law with respect to the manner in which lienees must give notice of liens on motor vehicles. The certificate of title issued by the Department now fixes the priority of liens. It is no longer necessary to record the mortgage or other lien in the county where the debtor resides. *Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N.C. 87, 125 S.E.2d 369 (1962).

**Effective Date of Lien.**—The lien, if the agreement to pay is filed with the Department within ten days from its date, relates back to the day the lien was created. *Wachovia Bank & Trust Co. v. Wayne Fin. Co.*, 262 N.C. 711, 138 S.E.2d 481 (1964).

**Pledge Not Prohibited.**—No language of

the 1961 amendatory act expressly prohibits the creation of a pledge. *Wachovia Bank & Trust Co. v. Wayne Fin. Co.*, 262 N.C. 711, 138 S.E.2d 481 (1964).

**Thus, Mortgagee in Possession May Have Priority.**—The legislature did not intend to prevent a mortgagee who has actual possession of the pledged vehicle from acquiring a lien having priority over liens not then perfected. *Wachovia Bank & Trust Co. v. Wayne Fin. Co.*, 262 N.C. 711, 138 S.E.2d 481 (1964).

**Duty of Officer to Report Levy; Levy Subordinate to Other Liens.**—When a levy has been made on an automobile pursuant to an execution, it is now the duty of the officer to report the levy to the Department of Motor Vehicles in a form prescribed by it. The levy so reported is subordinate to all liens theretofore noted on the certificate by the Department. *Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N.C. 87, 125 S.E.2d 369 (1962).

**§ 20-58.1. Liens created subsequent to original issuance of certificate of title.**—If an owner creates a security interest in a vehicle after the original issuance of a certificate of title to such vehicle.

- (1) The owner shall immediately execute an application, on a form the Department prescribes, to name the lien holder on the certificate, showing the name and address of the lien holder, the amount, date and nature of his security agreement, and cause the certificate, application and the required fee to be delivered to the lien holder.
- (2) The lien holder shall immediately cause the certificate, application and the required fee to be mailed or delivered to the Department.
- (3) If the certificate of title is in the possession of some prior lien holder, the new or subordinate lienor shall forward to the Department the required application for noting his lien, together with the required fee, and the Department when satisfied that the application is in order shall procure the certificate of title from the lien holder in whose possession it is being held, for the sole purpose of noting the new lien thereon. Upon request of the Department, a lien holder in possession of the certificate of title shall forthwith deliver or mail the certificate of title to the Department. The delivery of the certificate does not affect the rights of the first lien holder under his security agreement.
- (4) Upon receipt of the certificate of title, application and the required fee, the Department, if it finds the application in order, shall either endorse on the certificate, or issue a new certificate containing, the name and address of the new lien holder, and mail the certificate to the first lien holder named in it. The Department shall also notify the new



lien holder of the fact that his lien has been noted upon the certificate of title. (1961, c. 835, s. 6.)

**§ 20-58.2. Certificate as notice of lien.**—A certificate of title to a vehicle, when issued by the Department showing a lien or encumbrance, shall be deemed adequate notice to all creditors and purchasers that a security interest exists in and against the motor vehicle, and recordation of such reservation of title, lien or encumbrance in the county wherein the purchaser or debtor resides or elsewhere shall not be necessary for the validity thereof. (1961, c. 835, s. 6.)

**Section Changes Place of Recordation.**— of Motor Vehicles. Wachovia Bank & Trust Co. v. Wayne Fin. Co., 262 N.C. 711, 138 S.E.2d 481 (1964).  
The place where the lien is to be recorded is changed by this section from the office of the register of deeds to the Department

**§ 20-58.3. Assignment by lien holder.**—(a) A lien holder, other than one whose interest is dependent solely upon possession may assign, absolutely or otherwise, his security interest in the vehicle to a person other than the owner without affecting the interest of the owner or the validity of the security interest, but any person without notice of the assignment is protected in dealing with the lien holder as the holder of the security interest and the lien holder remains liable for any obligations as lien holder until an assignment by the lien holder is delivered to the Department as provided in subsection (b).

(b) The assignee may, but need not to perfect the assignment, have the certificate of title endorsed or issued with the assignee named as lien holder, upon delivering to the Department with the required fee, the certificate of title and an assignment by the lien holder named in the certificate in the form the Department prescribes.

(c) The assignee of any lien properly assigned and noted on the certificate of title as described above shall be entitled to the same priority among the outstanding lienors and have all the other property rights therein as had formerly been held by his assignor. (1961, c. 835, s. 6.)

**§ 20-58.4. Release of security interest.**—(a) Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of the lien holder, the lien holder shall within ten days after demand and, in any event, within thirty days, execute a release of his security interest, in the space provided therefor on the certificate or as the Department prescribes, and mail or deliver the certificate and release to the next lien holder named therein, or, if none, to the owner or other person authorized to receive the certificate for the owner.

(b) Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of a prior lien holder, the lien holder whose security interest is satisfied shall within ten days execute a release of his security interest in such form as the Department prescribes and mail or deliver the same to the owner or other person authorized to receive the same for the owner.

(c) An owner, upon securing the release of any security interest in a vehicle shown upon the certificate of title issued therefor, may exhibit the documents evidencing such release, signed by the person or persons making such release, and the certificate of title to the Department which shall, when satisfied as to the genuineness and regularity of the release, issue to the owner either a new certificate of title in proper form or an endorsement or rider attached thereto showing the release of the security interest.

(d) If an owner exhibits documents evidencing the release of a security interest as provided in subsection (c) of this section but is unable to furnish the certificate of title to the Department because it is in possession of a prior lien holder, the Department, when satisfied as to the genuineness and regularity of the release, shall procure the certificate of title from the person in possession thereof for the sole purpose of noting thereon the release of the subsequent se-

curity interest, following which the Department shall return the certificate of title to the person from whom it was obtained and notify the owner that the release has been noted on the certificate of title.

(e) If it is impossible for the owner to secure from the lien holder the release contemplated by this section, the owner may exhibit to the Department such evidence as may be available showing satisfaction of the debt secured, together with a sworn affidavit by the owner that the debt has been satisfied, which the Department may treat as a proper release for purposes of this section when satisfied as to the genuineness, truth and sufficiency thereof. Prior to cancellation of a security interest under the provisions of this subsection, at least fifteen days' notice of the pendency thereof shall be given to the lien holder at his last known address by the Department by registered letter. (1961, c. 835, s. 6.)

**§ 20-58.5. Duration of security interests in favor of firms which cease to do business.**—Any security interest recorded in favor of a firm or corporation which, since the recording of such lien, has dissolved, ceased to do business, or gone out of business for any reason, and which remains of record as a security interest of such firm or corporation for a period of more than three years from the date of the recording thereof, shall become null and void and of no further force and effect. (1961, c. 835, s. 6.)

**§ 20-58.6. Levy of execution or other proper court order as constituting security interest, etc.**—A levy made by virtue of an execution or some other proper court order, upon a vehicle for which a certificate of title has been issued by the Department, shall constitute a security interest, subsequent to all others theretofore recorded by the Department, if and when the officer making such levy makes a report to the Department in the form prescribed by the Department, that such levy has been made and that the vehicle levied upon has been seized by and is in the custody of such officer. If such security interest created thereby is thereafter satisfied, or should the vehicle thus levied upon and seized be thereafter released by such officer, he shall immediately report that fact to the Department. Any owner who, after such levy and seizure by an officer and before a report thereof by the officer to the Department, shall fraudulently assign or transfer his title to or interest in such vehicle or cause the certificate of title thereto to be assigned or transferred or cause a security interest to be shown upon such certificate of title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00), or imprisoned for not less than ten days nor more than twelve months. (1961, c. 835, s. 6.)

**§ 20-58.7. Duty of lien holder to disclose information.**—A lien holder named in a certificate of title shall, upon written request of the owner or of another lien holder named on the certificate, disclose information as to his security agreement and the indebtedness secured by it. (1961, c. 835, s. 6.)

**§ 20-58.8. Cancellation of certificate.**—The cancellation of a certificate of title shall not, in and of itself, affect the validity of a security interest noted on it. (1961, c. 835, s. 6.)

**§ 20-58.9. Excepted liens and security interests.**—The provisions of G.S. 20-58 through 20-58.8 inclusive shall not apply to or affect:

- (1) A lien given by statute or rule of law for storage of a motor vehicle or to a supplier of services or materials for a vehicle;
  - (2) A lien arising by virtue of a statute in favor of the United States, this State or any political subdivision of this State; or
  - (3) A security interest in a vehicle created by a manufacturer or dealer who holds the vehicle for resale but a buyer in the ordinary course of trade from the manufacturer or dealer takes free of such security interest.
- (1961, c. 835, s. 6.)

**§ 20-58.10. Effective date of §§ 20-58 to 20-58.9.**—The provisions of G.S. 20-58 through 20-58.9 inclusive shall be effective and relate to the perfecting and giving notice of security interests entered into on and after January 1, 1962. (1961, c. 835, s. 6.)

*Applied in Community Credit Co. of Le-noir, Inc. v. Norwood, 257 N.C. 87, 125 S.E.2d 369 (1962).*

**§ 20-59. Unlawful for lienor who holds certificate of title not to surrender same when lien satisfied.**—It shall be unlawful and constitute a misdemeanor for a lienor who holds a certificate of title as provided in this article to refuse or fail to surrender such certificate of title to the person legally entitled thereto, when called upon by such person, within ten days after his lien shall have been paid and satisfied, and any person convicted under this section shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty days. (1937, c. 407, s. 23.)

**§ 20-60. Owner after transfer not liable for negligent operation.**—The owner of a motor vehicle who has made a bona fide sale or transfer of his title or interest, and who has delivered possession of such vehicle and the certificate of title thereto properly endorsed to the purchaser or transferee, shall not be liable for any damages thereafter resulting from negligent operation of such vehicle by another. (1937, c. 407, s. 24.)

**§ 20-61. Owner dismantling or wrecking vehicle to return evidence of registration.**—Any owner dismantling or wrecking any vehicle shall forward to the Department the certificate of title, registration card and other proof of ownership, and the registration plates last issued for such vehicle, unless such plates are to be transferred to another vehicle of the same owner. In that event, the plates shall be retained and preserved by the owner for transfer to such other vehicle. No person, firm or corporation shall dismantle or wreck any motor vehicle without first complying with the requirements of this section. The Commissioner upon receipt of certificate of title and notice from the owner thereof that a vehicle has been junked or dismantled may cancel and destroy such record of certificate of title. (1937, c. 407, s. 25; 1947, c. 219, s. 3; 1961, c. 360, s. 3.)

**§ 20-62. Sale of motor vehicles to be dismantled.**—Any owner who sells a motor vehicle as scrap or to be dismantled or destroyed shall assign the certificate of title thereto to the purchaser, and shall deliver such certificate so assigned to the Department with an application for a permit to dismantle such vehicle. The Department shall thereupon issue to the purchaser a permit to dismantle the same, which shall authorize such person to possess or transport such vehicle or to transfer ownership thereto by endorsement upon such permit. A certificate of title shall not again be issued for such motor vehicle in the event it is scrapped, dismantled, or destroyed. In any case, where the owner for any reason fails to send in title for a junked or dismantled vehicle, the Department shall have authority to take possession of such title for cancellation. (1937, c. 407, s. 26.)

**§ 20-63. Registration plates to be furnished by the Department; requirements; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance.**—(a) The Department upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer or semi-trailer and for every other motor vehicle. Registration plates issued by the Department under this article shall be and remain the property of the State, and it shall be lawful for the Commissioner or his duly authorized agents to summarily take possession of any plate or plates which he has reason to believe is being illegally used, and to keep in his possession such plate or plates pending investigation and legal dis-



position of the same. Whenever the Commissioner finds that any registration plate issued for any vehicle pursuant to the provisions of this article has become illegible or is in such a condition that the numbers thereon may not be readily distinguished, he may require that such registration plate, and its companion when there are two registration plates, be surrendered to the Department. When said registration plate or plates are so surrendered to the Department, a new registration plate or plates shall be issued in lieu thereof without charge. The owner of any vehicle who receives notice to surrender illegible plate or plates on which the numbers are not readily distinguishable and who wilfully refuses to surrender said plates to the Department shall be guilty of a misdemeanor.

(b) Every registration plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, also the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration thereof.

(c) Such registration plate and the required numerals thereon, except the year number for which issued, shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

(d) Registration plates issued for a motor vehicle other than a motorcycle, trailer, or semi-trailer shall be attached thereto, one in the front and the other in the rear: Provided, that when only one registration plate is issued for a motor vehicle other than a truck-tractor, said registration plate shall be attached to the rear of the motor vehicle. The registration plate issued for a truck-tractor shall be attached to the front thereof.

(e) Preservation and Cleaning of Registration Plates.—It shall be the duty of each and every registered owner of a motor vehicle to keep the registration plates assigned to such motor vehicle reasonably clean and free from dust and dirt, and such registered owner, or any person in his employ, or who operates such motor vehicle by his authority, shall, upon the request of any proper officer, immediately clean such registration plates so that the numbers thereon may be readily distinguished, and any person who shall neglect or refuse to so clean a registration plate, after having been requested to do so, shall be guilty of a misdemeanor, and fined not exceeding fifty dollars (\$50.00) or imprisoned not exceeding thirty days.

(f) Operating with False Numbers.—Any person who shall wilfully operate a motor vehicle with a registration plate which has been repainted or altered or forged shall be guilty of a misdemeanor.

(g) Alteration, Disguise, or Concealment of Numbers.—Any operator of a motor vehicle who shall wilfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a misdemeanor.

(h) Commission Contracts for Issuance of Plates and Certificates.—All registration plates, registration certificates and certificates of title issued by the Department, outside of those issued from the Raleigh offices of the said Department and those issued and handled through the U.S. mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Department for the issuance of such plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina and the Department shall make a reasonable effort in every locality, except as hereinbefore noted, to enter into a commission contract for the issuance of such plates and certificates and a record of these efforts

shall be maintained in the Department. In the event the Department is unsuccessful in making commission contracts as hereinbefore set out it shall then issue said plates and certificates through the regular employees of the Department. Whenever registration plates, registration certificates and certificates of title are issued by the Department through commission contract arrangements, the Department shall provide proper supervision of such distribution. Commission contracts entered into hereunder shall provide for the payment of compensation at the rate of twenty-two cents (22¢) per registration plate. Nothing contained in this subsection will allow or permit the operation of fewer outlets in any county in this State than are now being operated. (1937, c. 407, s. 27; 1943, c. 726; 1951, c. 102, ss. 1-3; 1955, c. 119, s. 1; 1961, c. 360, s. 4; c. 861, s. 2; 1963, c. 552, s. 6; c. 1071; 1965, c. 1088.)

**Editor's Note.**—The first 1963 amendment substituted "truck-tractor" for "motorcycle, trailer or semi-trailer" in the proviso and last sentence of subsection (d). It also substituted "front" for "rear" near the end of the last sentence of subsection (d).

The second 1963 amendment deleted from the first sentence of subsection (h) the words "which are not engaged in any commercial enterprise in competition with any other person, firm or corporation in said locality," following the words "persons, firms, corporations or governmental subdivisions of the State of North Carolina."

The 1965 amendment substituted "shall provide for the payment of compensation at the rate of twenty-two cents (22¢) per registration plate" for former provisions allowing proration of compensation and fixing compensation at a maximum of seventeen cents per plate in subsection (h).

**Aiding and Abetting Unlawful Use of Plate.**—Guilt also attaches to anyone who knowingly aids and abets the unlawful use of a license plate. *Woodruff v. Holbrook*, 255 N.C. 740, 122 S.E.2d 709 (1961).

**§ 20-64. Transfer of registration plates to another vehicle.**—(a) Except as otherwise provided in this article, registration plates shall be retained by the owner thereof upon disposition of the vehicle to which assigned, and may be assigned to another vehicle, belonging to such owner and of a like vehicle category within the meaning of G.S. 20-87 and 20-88, upon proper application to the Department and payment of a transfer fee and such additional fees as may be due because the vehicle to which the plates are to be assigned requires a greater registration fee than that vehicle to which the license plates were last assigned. In cases where the plate is assigned to another vehicle belonging to such owner, and is not of a like vehicle category within the meaning of G.S. 20-87 and 20-88, the owner shall surrender the plate to the Department and receive therefor a plate of the proper category, and the unexpired portion of the fee originally paid by the owner for the plate so surrendered shall be a credit toward the fee charged for the new plate of the proper category. Provided, that the owner shall not be entitled to a cash refund when the registration fee for the vehicle to which the plates are to be assigned is less than the registration fee for that vehicle to which the license plates were last assigned. Provided, however, registration plates may not be transferred under this section after December thirty-first of the year for which issued. An owner assigning or transferring plates to another vehicle as provided herein shall be subject to the same assessments and penalties for use of the plates on another vehicle or for improper use of the plates, as he could have been for the use of the plates on the vehicle to which last assigned. Provided, however, that upon compliance with the requirements of this section, the registration plates of vehicles owned by and registered in the name of a corporation may be transferred and assigned to a like vehicle category within the meaning of G.S. 20-87 and 20-88, upon the showing that the vehicle to which the transfer and assignment is to be made is owned by a corporation which is a wholly owned subsidiary of the corporation applying for such transfer and assignment.



(b) Upon a change of the name of a corporation or a change of the name under which a proprietorship or partnership is doing business, the corporation, partnership or proprietorship shall forthwith apply for correction of the certificate of title of all vehicles owned by such corporation, partnership or proprietorship so as to correctly reflect the name of the corporation or the name under which the proprietorship or partnership is doing business, and pay the fees required by law.

(c) Upon a change in the composition of a partnership, ownership of vehicles belonging to such partnership shall not be deemed to have changed so long as one partner of the predecessor partnership remains a partner in the reconstituted partnership, but the reconstituted partnership shall forthwith apply for correction of the certificate of title of all vehicles owned by such partnership so as to correctly reflect the composition of the partnership and the name under which it is doing business, if any, and pay the fees required by law.

(d) When a proprietorship or partnership is incorporated, the corporation shall retain license plates assigned to vehicles belonging to it and may use the same, provided the corporation applies for and obtains transfers of the certificates of title of all vehicles and pays the fees required by law.

(e) Upon death of the owner of a registered vehicle, such registration shall continue in force as a valid registration until the end of the year for which the license is issued unless ownership of the vehicle passes or is transferred to any person other than the surviving spouse before the end of the year.

(f) Whenever the owner of a registered vehicle transfers or assigns his interest to another who licenses such vehicle in North Carolina in his name for the same license year, such transferor may, by surrendering the plate and registration certificate to the Department, secure a refund of the unexpired portion of such plate on a monthly basis, beginning the first day of the month following the transfer of interest, provided, that the annual license fee for such surrendered plates is sixty dollars (\$60.00) or more.

(g) The Commissioner of Motor Vehicles shall have the power to make such rules and regulations as he may deem necessary for the administration of transfers of license plates and vehicles under this article. (1937, c. 407, s. 28; 1945, c. 576, s. 1; 1947, c. 914, s. 1; 1951, c. 188; c. 819, s. 1; 1961, c. 360, s. 5; 1963, cc. 1067, 1190.)

**Editor's Note.**—The first 1963 amendment inserted the present second and third sentences in subsection (a). The second 1963 amendment added the proviso at the end of subsection (a).

**§ 20-64.1. Revocation of license plates by Utilities Commission.**—The license plates of any carrier of persons or property by motor vehicle for compensation may be revoked and removed from the vehicles of any such carrier for wilful violation of any provision of either the North Carolina Truck Act of 1947 or the Bus Act of 1949, or for the wilful violation of any lawful rule or regulation made and promulgated by the North Carolina Utilities Commission under said acts. To that end said Commission shall have power upon complaint or upon its own motion, after notice and hearing under the rules of evidence prescribed in G.S. 62-18, to order the license plates of any such offending carrier revoked and removed from the vehicles of such carrier for a period not exceeding thirty (30) days, and it shall be the duty of the Department of Motor Vehicles to execute such orders made by the North Carolina Utilities Commission upon receipt of a certified copy of the same.

This section shall be in addition to and independent of other provisions of law for the enforcement of the motor carrier laws of this State. (1951, c. 1120.)

**Editor's Note.**—In chapter 62 as rewritten by Session Laws 1963, c. 1165, the North Carolina Truck Act of 1947 and the Bus Act of 1949 referred to in this section are combined as article 12, §§ 62-259 through 62-279. Section 62-278 in chapter 62 as rewritten is in substance a re-enactment of this section.



**§ 20-64.2. Permit for emergency use of registration plate.**—The Commissioner may, if in his opinion it is equitable, grant to the licensee a special permit for the use of a registration plate on a vehicle other than the vehicle for which the plate was issued, when the vehicle for which such plate was issued is undergoing repairs in a regular repair shop or garage.

Application for such permit shall be made on forms provided by the Department and must show, in addition to such other information as may be required by the Commissioner, that an emergency exists which would warrant the issuance of such permit.

Such permit shall be evidenced by a certificate issued by the Commissioner and which shall show the time of issuance, the person to whom issued, the motor number, serial number or identification number of the vehicle on which such plate is to be used and shall be in the immediate possession of the person operating such vehicle at all times while operating the same. And such certificate shall be valid only so long as the vehicle for which the registration plate has been issued shall remain in the repair shop or garage but not to exceed a period of twenty (20) days from its issuance. The person to whom the permit provided in this section is issued shall be liable for any additional license fees or penalties that might accrue by reason of the provisions of §§ 20-86 and 20-96 of the General Statutes. (1957, c. 402.)

**§ 20-65. Expiration of registration.**—Every vehicle registration under this article and every registration card and registration plate issued hereunder shall expire at midnight on the thirty-first day of December of each year: Provided, however, that it shall not be unlawful to continue to operate any vehicle upon the highways of this State after the expiration of the registration of said vehicle, registration card and registration plate during the period between the thirty-first day of December and the fifteenth day of February, inclusive, if the license plate is registered to the vehicle on which it is being used prior to the thirty-first day of December. (1937, c. 407, s. 29; 1943, c. 592, s. 1; 1955, c. 554, s. 3; 1961, c. 360, s. 6.)

**§ 20-66. Application for renewal of registration.**—(a) Application for renewal of a vehicle registration shall be made by the owner upon proper application and by payment of the registration fee for such vehicle, as provided by law.

(b) The Department may receive applications for renewal of registration and grant the same, and issue new registration cards and plates at any time prior to expiration of registration. (1937, c. 407, s. 30; 1955, c. 554, s. 3.)

**§ 20-66.1. Devices in lieu of registration plates for renewal of vehicle registration.**—The Department may issue one or more stickers, tabs, or other suitable devices for renewal of vehicle registration in lieu of new registration plates provided for under this article. Except where the physical differences between the stickers, tabs, or devices and registration plates by their nature render the provisions of this chapter inapplicable, all provisions of this chapter relating to registration plates shall apply to stickers, tabs, or devices. When issued, such stickers, tabs, or devices shall be displayed as prescribed by the Commissioner. (1963, c. 552, s. 7.)

**§ 20-67. Notice of change of address or name.**—(a) Whenever any person, after making application for or obtaining the registration of a vehicle or a certificate of title, shall move from the address named in the application or shown upon a registration card or certificate of title, such person shall within ten days thereafter notify the Department in writing of his old and new addresses.

(b) Whenever the name of any person who has made application for or obtained the registration of a vehicle or a certificate of title is thereafter changed by marriage or otherwise, such person shall thereafter forward or cause to be

forwarded to the Department the certificate of title and to make application for correction of the certificate on forms provided by the Department. (1937, c. 407, s. 31, 1955, c. 554, s. 4.)

**§ 20-68. Replacement of lost or damaged certificates, cards and plates.**—(a) In the event any registration card or registration plate is lost, mutilated, or becomes illegible, the owner or legal representative of the owner of the vehicle for which the same was issued, as shown by the records of the Department, shall immediately make application for and may obtain a duplicate or a substitute or a new registration under a new registration number, as determined to be most advisable by the Department, upon the applicant's furnishing under oath information satisfactory to the Department and payment of required fee.

(b) If a certificate of title is lost, stolen, mutilated, destroyed or becomes illegible, the first lien holder or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the Department, shall promptly make application for and may obtain a duplicate upon furnishing information satisfactory to the Department. It shall be mailed to the first lien holder named in it or, if none, to the owner. The Department shall not issue a new certificate of title upon application made on a duplicate until fifteen days after receipt of the application. A person recovering an original certificate of title for which a duplicate has been issued shall promptly surrender the original certificate to the Department. (1937, c. 407, s. 32; 1961, c. 360, s. 7; c. 835, s. 7.)

**Cross Reference.**—As to fees for duplicate certificate, see § 20-85.

**§ 20-69. Department authorized to assign new engine number.**—The owner of a motor vehicle upon which the engine number or serial number has become illegible or has been removed or obliterated shall immediately make application to the Department for a new engine or serial number for such motor vehicle. The Department, when satisfied that the applicant is the lawful owner of the vehicle referred to in such application is hereby authorized to assign a new engine or serial number thereto, and shall require that such number, together with the name of this State, or a symbol indicating this State, be stamped upon the engine, or in the event such number is a serial number, then upon such portion of the motor vehicle as shall be designated by the Department. (1937, c. 407, s. 33.)

**§ 20-70. Department to be notified when another engine is installed or body changed.**—(a) Whenever a motor vehicle registered hereunder is altered by the installation of another engine in place of an engine, the number of which is shown in the registration records, or the installation of another body in place of a body, the owner of such motor vehicle shall immediately give notice to the Department in writing on a form prepared by it, which shall state the number of the former engine and the number of the newly installed engine, the registration number of the motor vehicle, the name of the owner and any other information which the Department may require. Whenever another engine has been substituted as provided in this section, and the notice given as required hereunder, the Department shall insert the number of the newly installed engine upon the registration card and certificate of title issued for such motor vehicle.

(b) Whenever a new engine or serial number has been assigned to and stamped upon a motor vehicle as provided in § 20-69, or whenever a new engine has been installed or body changed as provided in this section, the Department shall require the owner to surrender to the Department the registration card and certificate of title previously issued for said vehicle. The Department shall also require the owner to make application for a duplicate registration card and a duplicate certificate of title showing the new motor or serial number thereon or new style of body, and upon receipt of such application and fee, as for any other duplicate

title, the Department shall issue to said owner a duplicate registration and a duplicate certificate of title showing thereon the new number in place of the original number or the new style of body. (1937, c. 407, s. 34; 1943, c. 726.)

**Cross Reference.**—As to fee for duplicate registration card and certificate of title, see § 20-85.

**§ 20-71. Altering or forging certificate of title, registration card or application, a felony.**—Any person who, with fraudulent intent, shall alter any certificate of title, registration card issued by the Department, or any application for a certificate of title or registration card, or forge or counterfeit any certificate of title or registration card purported to have been issued by the Department under the provisions of this article, or who, with fraudulent intent, shall alter, falsify or forge any assignment thereof, or who shall hold or use any such certificate, registration card, or application, or assignment, knowing the same to have been altered, forged or falsified, shall be guilty of a felony and upon conviction thereof shall be punished in the discretion of the court. (1937, c. 407, s. 35; 1959, c. 1264, s. 2.)

**Cross Reference.**—As to punishment of felonies for which no specific punishment is prescribed, see § 14-2.

**Applied in** *Smart Fin. Co. v. Dick*, 256 N.C. 669, 124 S.E.2d 862 (1962).

**§ 20-71.1. Registration evidence of ownership; ownership evidence of defendant's responsibility for conduct of operation.**—(a) In all actions to recover damages for injury to the person or to property or for the death of a person, arising out of an accident or collision involving a motor vehicle, proof of ownership of such motor vehicle at the time of such accident or collision shall be prima facie evidence that said motor vehicle was being operated and used with the authority, consent, and knowledge of the owner in the very transaction out of which said injury or cause of action arose.

(b) Proof of the registration of a motor vehicle in the name of any person, firm, or corporation, shall for the purpose of any such action, be prima facie evidence of ownership and that such motor vehicle was then being operated by and under the control of a person for whose conduct the owner was legally responsible, for the owner's benefit, and within the course and scope of his employment. (1951, c. 494; 1961, c. 975.)

**Editor's Note.**—For case note discussing cases arising under this section, see 41 N.C.L. Rev. 124 (1962). For note on permissive user under the omnibus clause, see 41 N.C.L. Rev. 232 (1963).

**Purpose of Section.**—The evident purpose of this section was to require that proof of ownership of an offending motor vehicle should be regarded as prima facie evidence that it was being operated at the time of the accident by the authority of the owner, doubtless having in view the decision in *Carter v. Thurston Motor Lines*, 227 N.C. 193, 41 S.E.2d 586 (1947), and to provide that, in the absence of proof of ownership, proof of motor vehicle registration in the name of a person would be prima facie evidence that the motor vehicle was being operated by one for whose conduct such person is legally responsible. *Travis v. Duckworth*, 237 N.C. 471, 75 S.E.2d 309 (1953).

**And Scope.**—This section applies in all

actions to recover damages for injury to the person or to property, or for the death of a person, arising out of an accident or a collision involving a motor vehicle, and the rule of evidence established thereby applies whenever a factual determination as to alleged agency is to be made whether by the court to resolve a question of fact or by a jury to resolve an issue of fact. *Howard v. Sasso*, 253 N.C. 185, 116 S.E.2d 341 (1960).

**The two subsections of this section are identical in their objective.** While the language used in subsection (a) is not as apt as that used in subsection (b), the intent and meaning of the two are the same. *Hartley v. Smith*, 239 N.C. 170, 79 S.E.2d 767 (1954).

The legislature used the language "was being operated and used with the authority, consent, and knowledge of the owner" in subsection (a) of this section to connote "under the direction and control of the



owner," and when one acts under the direction and control of another, he is agent or employee. It did not intend to give greater force and effect to mere proof of registration than to the admission or actual proof of ownership. In short, proof of registration is prima facie proof of ownership, under subsection (b), which in turn is prima facie proof of agency under subsection (a). *Hartley v. Smith*, 239 N.C. 170, 79 S.E.2d 767 (1954).

**Essential Meaning of This Section and § 1-105 the Same.** — Despite differences in the wording of this section and § 1-105 the essential meaning is the same. Section 1-105 requires an affirmative finding as to agency and this section establishes the rule that proof of ownership is prima facie evidence of such agency. *Howard v. Sasso*, 253 N.C. 185, 116 S.E.2d 341 (1960).

**Proof of legal title to an automobile makes at least a prima facie showing of the ownership** in the one in whose name the title is registered. *Guilford Nat'l Bank v. Southern Ry.*, 319 F.2d 825 (4th Cir. 1963).

**Proof of Ownership Sufficient to Support Service on Nonresident.**—Under this section ownership of a vehicle involved in an accident is sufficient proof of agency to support service of process on nonresident owner of motor vehicle whose agent is alleged to have negligently injured plaintiff by operation of the vehicle on North Carolina highways. *Todd v. Thomas*, 202 F. Supp. 45 (E.D.N.C. 1962). See *Davis v. St. Paul-Mercury Indem. Co.*, 294 F.2d 641 (4th Cir. 1961). And see § 1-105 and note.

**This section applies to an accident occurring prior to its effective date unless action was pending at the time of its effective date.** *Spencer v. McDowell Motor Co.*, 236 N.C. 239, 72 S.E.2d 598 (1952).

**Proof of Ownership Alone Takes Case to Jury on Issue of Agency.**—Proof of ownership by the defendant of the motor vehicle involved in the injury complained of, by force of this section, must be regarded as sufficient to carry the case to the jury on the question of the legal responsibility of the defendant for the operation of the vehicle. *Travis v. Duckworth*, 237 N.C. 471, 75 S.E.2d 309 (1953); *Kellogg v. Thomas*, 244 N.C. 722, 94 S.E.2d 903 (1956); *Scott v. Lee*, 245 N.C. 68, 95 S.E.2d 89 (1956); *Johnson v. Wayne Thompson, Inc.*, 250 N.C. 665, 110 S.E.2d 306 (1959).

Under this section all now required for submission of the issue to the jury is that the injured party show ownership of the

motor vehicle, which may be done prima facie by proof that the motor vehicle was registered in the name of the person sought to be charged. *Jyachosky v. Wensil*, 240 N.C. 217, 81 S.E.2d 644 (1954).

Under this section an admission of the ownership of one of the vehicles involved in a collision is sufficient to make out a prima facie case of agency sufficient to support, but not to compel, a verdict against the owner under the doctrine of respondeat superior for damages proximately caused by the negligence of the driver. *Hartley v. Smith*, 239 N.C. 170, 79 S.E.2d 767 (1954); *Elliott v. Killian*, 242 N.C. 471, 87 S.E.2d 903 (1955); *Davis v. Lawrence*, 242 N.C. 496, 87 S.E.2d 915 (1955); *Hatcher v. Clayton*, 242 N.C. 450, 88 S.E.2d 104 (1955); *Caughron v. Walker*, 243 N.C. 153, 90 S.E.2d 305 (1955).

While the vigor of the statute makes admitted ownership of a truck prima facie evidence that the operator was acting as the owner's agent or employee within the scope of his employment, and sufficient to carry the case to the jury, it does not compel the finding by the jury that the driver was negligent or that he was the agent or employee of the owner and at the time acting within the scope of his employment. *Brothers v. Jernigan*, 244 N.C. 441, 94 S.E.2d 316 (1956).

The ultimate issue is for jury determination, notwithstanding the only positive evidence tends to show explicitly and clearly that the operator, whether driving with or without the owner's consent, was on a purely personal mission at the time of the collision. *Whiteside v. McCarson*, 250 N.C. 673, 110 S.E.2d 295 (1959).

This section makes out a prima facie case of agency which will support, but does not compel, a verdict against defendant upon the principle of respondeat superior. *Chappell v. Dean*, 258 N.C. 412, 128 S.E.2d 830 (1963).

Where there is sufficient evidence of negligence of the operator of a motor vehicle to be submitted to the jury on that issue, evidence that the vehicle was registered in the name of the other defendant takes the issue of such other defendant's liability to the jury. *Ennis v. Dupree*, 258 N.C. 141, 128 S.E.2d 231 (1962).

Proof of registration or admission of ownership furnishes, by virtue of the statute, prima facie evidence that the driver is agent of the owner in the operation, and is sufficient to support, but not compel, a verdict on the agency issue. It takes the issue to the jury. Even so, plaintiff must allege,

and has the burden of proving, agency. *Mitchell v. White*, 256 N.C. 437, 124 S.E.2d 137 (1962).

Where a judgment of compulsory nonsuit of plaintiff's action against a defendant who was the driver of the automobile involved in the action was improvidently entered, the trial court also erred in entering a judgment of compulsory nonsuit against another defendant, for the reason that the automobile was registered in the latter's name, and therefore plaintiff was entitled to go to the jury against him by virtue of the provisions of this section. *Hamilton v. McCash*, 257 N.C. 611, 127 S.E.2d 214 (1962).

By reason of this section, the agency issue is for determination by the jury under proper instructions. *Moore v. Crocker*, 264 N.C. 232, 141 S.E.2d 307 (1965).

**But Defendant May Be Entitled to Instruction.**—Where evidence discloses that an employee was driving the vehicle registered in the name of the employer, and there is evidence that the employee was driving on the occasion in question on a purely personal mission without the knowledge or consent of the employer, the court properly submits the issue of the employer's liability to the jury under instructions that if the jury should find that employee was engaged in a purely personal mission without the knowledge or consent of the employer the jury should answer the issue in the negative. *Skinner v. Jernigan*, 250 N.C. 657, 110 S.E.2d 301 (1959).

Where plaintiff relies solely on the provisions of this section on the issue of respondeat superior and introduces no evidence, but defendant introduces evidence tending to show that the driver was on a purely personal mission of his own at the time of the accident, there is no evidence upon which the court may instruct the jury in plaintiff's favor on the issue, and the court's explanation of the rule of evidence prescribed by the statute is sufficient; but as to the defendant's evidence, the court is required, even in the absence of a request for special instructions, to give explicit instruction applying defendant's evidence to the issue and charging that if the jury should find the facts to be as defendant's evidence tends to show, the issue should be answered in the negative. *Whiteside v. McCarson*, 250 N.C. 673, 110 S.E.2d 295 (1959).

In any case in which a plaintiff, as against the registered owner of a motor vehicle, relies solely upon this section to prove the agency of nonowner operator, and in which all of the positive evidence

in the case is to the effect that the operator was on a mission of his own and not on any business for the registered owner, it is the duty of the trial judge, even if there is evidence that the registered owner gave the operator permission to use the vehicle, to instruct the jury that, if they believe the evidence and find the facts to be as the evidence tends to show, that is, that the operator was on a mission of his own, they will answer the agency issue in the negative. And it is prejudicial error for the court, in such circumstances, to fail to so instruct the jury, even if there is no special request therefor. *Chappell v. Dean*, 258 N.C. 412, 128 S.E.2d 830 (1963).

**And Section Applies Only Where Plaintiff Relies on Doctrine of Respondeat Superior.**—This section was designed and intended to apply, and does apply, only in those cases where the plaintiff seeks to hold an owner liable for the negligence of a nonowner operator under the doctrine of respondeat superior. *Roberts v. Hill*, 240 N.C. 373, 82 S.E.2d 373 (1954); *Jones v. Farm Bureau Mut. Auto. Ins. Co.*, 159 F. Supp. 404 (E.D.N.C. 1958); *Howard v. Sasso*, 253 N.C. 185, 116 S.E.2d 341 (1960).

Where the theory of the complaint is that defendant was driving the car or that it was being driven by another under defendant's direction and control, and there is no allegation of agency or of negligence of an alleged agent, plaintiff cannot call to his aid the provisions of this section to prove that defendant himself was operating the car or had entrusted its operation to one he knew or should have known was likely to cause an accident by reason of incompetency, carelessness or recklessness. *Osborne v. Gilreath*, 241 N.C. 685, 86 S.E.2d 462 (1955).

**And does not apply where plaintiff attempts to prove owner liable under "family purpose doctrine."** *Fox v. Albea*, 250 N.C. 445, 109 S.E.2d 197 (1959).

**It Merely Creates a Rule of Evidence.**—This section was designed to create a rule of evidence. Its purpose is to establish a ready means of proving agency in any case where it is charged that the negligence of a nonowner operator causes damage to the property or injury to the person of another. It does not have, and was not intended to have, any other or further force or effect. *Hartley v. Smith*, 239 N.C. 170, 79 S.E.2d 767 (1954). See *Roberts v. Hill*, 240 N.C. 373, 82 S.E.2d 373 (1954); *Osborne v. Gilreath*, 241 N.C. 685, 86 S.E.2d 462 (1955); *Elliott v. Killian*, 242 N.C. 471, 87 S.E.2d 903 (1955); *Fox v. Albea*, 250 N.C. 445, 109 S.E.2d 197 (1959);

*Lynn v. Clark*, 252 N.C. 289, 113 S.E.2d 427 (1960); *Howard v. Sasso*, 253 N.C. 185, 116 S.E.2d 341 (1960); *Taylor v. Parks*, 254 N.C. 266, 118 S.E.2d 779 (1961); *Chappell v. Dean*, 258 N.C. 412, 128 S.E.2d 830 (1963).

The presumption of this section relates to the rule of evidence and procedure rather than to substantive rights. *Randall Ins., Inc. v. O'Neill*, 258 N.C. 169, 128 S.E.2d 239 (1962).

This section creates a rule of evidence, and has no other or further force or effect. *Mitchell v. White*, 256 N.C. 437, 124 S.E.2d 137 (1962).

**Which Applies to Making Factual Determination as to Alleged Agency.**—The rule of evidence established by this section applies whenever a factual determination as to alleged agency is to be made, whether by the court to resolve a question of fact or by a jury to resolve an issue of fact. *Howard v. Sasso*, 253 N.C. 185, 116 S.E.2d 341 (1960).

**And Does Not Change Basic Rule as to Liability.**—This section did not change the basic rule as to liability. It did establish a new rule of evidence, changing radically the requirements as to what the injured plaintiff must show in evidence in order to have his case passed on by the jury. *Jyachosky v. Wensil*, 240 N.C. 217, 81 S.E.2d 644 (1954).

**Presumption Is Not One of Law, and Does Not Shift Burden of Proof.**—Where the trial judge instructed the jury that proof of registration constitutes such prima facie evidence, and then stated: "... (T)hat is a rebuttable presumption and . . . the defendant has the right and it is his duty to rebut this presumption of law," the quoted portion of the instruction is erroneous, since this section creates no presumption of law, and it does not shift the burden of the issue from plaintiff to defendant. *Chappell v. Dean*, 258 N.C. 412, 128 S.E.2d 830 (1963).

**Plaintiff Is Not Relieved of Alleging Ultimate Facts.**—The provisions of this section are a rule of evidence and do not relieve a plaintiff of alleging the ultimate facts on which to base a cause of actionable negligence. *Parker v. Underwood*, 239 N.C. 308, 79 S.E.2d 765 (1954).

**Both Negligence and Agency Must Be Alleged and Proved.**—This section was not enacted and designed to render proof unnecessary, nor does proof of registration or ownership make out a prima facie case for the jury on the issue of negligence. Neither is it sufficient to send the case to the jury, or to support a finding favorable

to plaintiff under the negligence issue, or to support a finding against a defendant on the issue of negligence. It does not constitute evidence of negligence. It is instead directed solely to the question of agency of a nonowner operator of a motor vehicle involved in an accident. Non constat this section, it is still necessary for the party aggrieved to allege both negligence and agency in his pleading and to prove both at the trial. *Hartley v. Smith*, 239 N.C. 170, 79 S.E.2d 767 (1954).

This section establishes a rule of evidence, but does not relieve a plaintiff from alleging and proving negligence and agency. *Osborne v. Gilreath*, 241 N.C. 685, 86 S.E.2d 462 (1955).

This section does not relieve plaintiff of the duty to allege and the burden of proving agency. *Chappell v. Dean*, 258 N.C. 412, 128 S.E.2d 830 (1963).

This section presupposes a cause of action based on allegations of agency and of actionable negligence, and therefore, if the complaint fails to allege agency or actionable negligence, it is demurrable and is insufficient to support a verdict for damages against the owner of the vehicle. *Lynn v. Clark*, 252 N.C. 289, 113 S.E.2d 427 (1960).

This section did not change the elements prerequisite to liability under the doctrine of respondeat superior. To establish liability under this doctrine, the injured plaintiff must allege and prove that the operator was the agent of the owner, and that this relationship existed at the time and in respect of the very transaction out of which the injury arose. *Whiteside v. McCarron*, 250 N.C. 673, 110 S.E.2d 295 (1959).

Allegations to the effect that the car involved in the accident was owned by the mother of the driver are insufficient to charge the mother with liability under this section, since the effect of the statute is solely to provide a ready means of proving agency and does not dispense with the necessity of allegations that the driver was the agent of the owner. *Lynn v. Clark*, 252 N.C. 289, 113 S.E.2d 427 (1960).

Proof that one owns a motor vehicle which is operated in a negligent manner, causing injury to another, is not sufficient to impose liability on the owner. The injured party, if he is to recover from the owner, must allege and prove facts (1) calling for an application of the doctrine of respondeat superior, or (2) negligence of the owner himself in (a) providing the driver with a vehicle known to be dangerous because of its defective condition, or (b) permitting a known incompetent driver



to use the vehicle on the highway. *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

**And Section Creates No Presumption That Owner Was Driver.** — This section does not provide that proof of ownership of an automobile, or proof of the registration of an automobile in the name of any person, shall be prima facie evidence that the owner of the automobile, or the person in whose name it was registered, was the driver of the automobile at the time of a wreck. *Parker v. Wilson*, 247 N.C. 47, 100 S.E.2d 258 (1957), declining to adopt a rule holding that upon the facts of the instant case a rebuttable presumption or inference arose that defendant's testate was driving his automobile at the time of the fatal crash; *Johnson v. Fox*, 254 N.C. 454, 119 S.E.2d 185 (1961).

**Necessity for Evidence that Defendant Was Registered Owner.** — Where plaintiff offered no evidence to support her allegation that a parent was the registered owner of an automobile operated by his son, she could not benefit by the presumption of agency created by this section. *Griffin v. Pancoast*, 257 N.C. 52, 125 S.E.2d 310 (1962).

In the absence of evidence that defendant is the owner of the vehicle, plaintiff is not entitled to the benefit of this section. *Freeman v. Biggers Bros.*, 260 N.C. 300, 132 S.E.2d 626 (1963).

**Owner-occupant of car ordinarily has the right to direct its operation by the driver.** *Randall v. Rogers*, 262 N.C. 544, 138 S.E.2d 248 (1964).

**Hence, he is responsible for driver's negligence irrespective of agency**, as such, and the provisions of this section. *Randall v. Rogers*, 262 N.C. 544, 138 S.E.2d 248 (1964).

**Presumption of Agency Rebuttable by Plaintiffs' Own Evidence.** — Where defendant admits that, at the time of the accident, he was the owner of one of the vehicles involved in the collision, but plaintiff elicits testimony from her own witnesses of declarations made by defendant to the effect that, at the time in question, the driver had taken defendants' automobile without defendant's authorization, knowledge, or consent, and was not at the time defendant's agent or employee or acting in the course and scope of any employment by defendant, plaintiff's own evidence rebuts the presumption created by this section, and such evidence not being contradicted by any other evidence of either plaintiff or defendant, nonsuit on the is-

sue of agency is proper. *Taylor v. Parks*, 254 N.C. 266, 118 S.E.2d 779 (1961).

**Effect of Evidence that Driver Was Co-owner with Registered Owner.** — Evidence that a vehicle operated by a woman was registered in the name of her husband is prima facie evidence that she was driving as his agent, but even so, parol evidence is competent to show that the husband and wife were in fact co-owners, and when there is such evidence, it is error for the court to peremptorily instruct the jury to answer the issue of agency in the affirmative. *Rushing v. Polk*, 258 N.C. 256, 128 S.E.2d 675 (1962).

**Name on Vehicle Is Prima Facie Evidence of Ownership.** — Where common carriers of freight are operating tractor-trailer units, on public highways, and such equipment bears the insignia or name of such carrier, and the motor vehicle is involved in a collision or inflicts injury upon another, evidence that the name of the defendant was painted or inscribed on the motor vehicle which inflicted the injury constitutes prima facie evidence that the defendant whose name or identifying insignia appears thereon was the owner of such vehicle and that the driver thereof was operating it for and on behalf of the defendant. *Freeman v. Biggers Bros.*, 260 N.C. 300, 132 S.E.2d 626 (1963).

**Provided Name Is Identified with Defendant.** — Evidence of the color and size of a truck which struck plaintiff, and that it had on its doors signs reading "Biggers Brothers Wholesale Fruit and Produce," without evidence tending to identify the signs on the truck with defendant or with other trucks owned by defendant, or any evidence of the nature of defendant's business, was insufficient to establish ownership and invoke the benefit of this section. *Freeman v. Biggers Bros.*, 260 N.C. 300, 132 S.E.2d 626 (1963).

**License Plates As Prima Facie Evidence of Ownership.** — A prima facie case of ownership is made out by virtue of this section when license plates issued to driver are on the vehicle, even though the car described on the registration does not have the same body style as the vehicle actually being driven. *Rick v. Murphy*, 251 N.C. 162, 110 S.E.2d 815 (1959).

**Where title to an automobile stands in the wife's name**, the imputation of her alleged negligence to her husband, who was riding as a passenger in the automobile driven by the wife, cannot be predicated upon evidence showing that the husband made the deferred payments on the purchase price of the car, paid the expenses

incident to maintaining the car, and treated the car for tax purposes as a depreciable asset of his business enterprise. *Guilford Nat'l Bank v. Southern Ry.*, 319 F.2d 825 (4th Cir. 1963).

**Liability of Merchants and Mechanics.**—This section does not make the merchant who supplies parts, or the mechanic who performs work and supplies parts, responsible for the operation of a repaired or rebuilt motor vehicle. *Rick v. Murphy*, 251 N.C. 162, 110 S.E.2d 815 (1959), holding garage operator who supplied body from wrecked car he owned to be used with parts from customer's wrecked car to make a motor vehicle for the customer was not owner of such motor vehicle.

**Joinder for Contribution.**—Where, in an action by a passenger against the drivers involved in a collision, plaintiff makes out a prima facie case of negligence on the part of the driver of the car, proof or admissions that the additional defendant was the registered owner of the car establishes prima facie that the driver was such owner's agent and was acting in the course and scope of the employment, and entitles the

defendants to have the owner of the car joined for contribution. *McPherson v. Haire*, 262 N.C. 71, 136 S.E.2d 224 (1964).

**Applied**, as to institution of action within one year, in *Hensley v. Harris*, 242 N.C. 599, 89 S.E.2d 155 (1955); *Knight v. Associated Transp., Inc.*, 255 N.C. 462, 122 S.E.2d 64 (1961); *Tharpe v. Newman*, 257 N.C. 71, 125 S.E.2d 315 (1962); *Hawley v. Indemnity Ins. Co. of North America*, 257 N.C. 381, 126 S.E.2d 161 (1962); *Salter v. Lovick*, 257 N.C. 619, 127 S.E.2d 273 (1962); *Smith v. Simpson*, 260 N.C. 601, 133 S.E.2d 474 (1963); *Yates v. Chappell*, 263 N.C. 461, 139 S.E.2d 728 (1965).

**Quoted** in *State v. Scoggin*, 236 N.C. 19, 72 S.E.2d 54 (1952); *Chatfield v. Farm Bureau Mut. Auto. Ins. Co.*, 208 F.2d 250 (4th Cir. 1953).

**Cited** in *Northwest Cas. Co. v. Kirkman*, 119 F. Supp. 828 (M.D.N.C. 1954); *Ransdell v. Young*, 243 N.C. 75, 89 S.E.2d 773 (1955); *Williamson v. Varner*, 252 N.C. 446, 114 S.E.2d 92 (1960); *Tart v. Register*, 257 N.C. 161, 125 S.E.2d 754 (1962); *Parlier v. Barnes*, 260 N.C. 341, 132 S.E.2d 684 (1963).

#### Part 4. Transfer of Title or Interest.

§ 20-72. **Transfer by owner.**—(a) Whenever the owner of a registered vehicle transfers or assigns his title or interests thereto, he shall remove the license plates and endorse upon the reverse side of the registration card issued for such vehicle the name and address of the transferee and the date of such transfer. Such registration card and plates shall be forwarded to the Department unless the plates are to be transferred to another vehicle as provided in G.S. 20-64. If they are to be transferred to and used with another vehicle, then the endorsed registration card and the plates shall be retained and preserved by the owner. If such registration plates are to be transferred to and used with another vehicle, then the owner shall make application to the Department for assignment of the registration plates to such other vehicle under the provisions of G.S. 20-64. Such application shall be made within twenty (20) days after the date on which such plates are last used on the vehicle to which theretofore assigned.

(b) In order to assign or transfer title or interest in any motor vehicle registered under the provisions of this article, the owner shall execute in the presence of a person authorized to administer oaths an assignment and warranty of title on the reverse of the certificate of title in form approved by the Department, including in such assignment the name and address of the transferee; and no title to any other motor vehicle shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee. The provisions of this section shall not apply to any foreclosure or repossession under a chattel mortgage or conditional sales contract or any judicial sale.

Any person transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together with the transferee's application for new title and necessary fees to the Department within

twenty (20) days. Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a misdemeanor.

(c) When the Department finds that any person other than the registered owner of a vehicle has in his possession a certificate of title to the vehicle on which there appears an endorsement of an assignment of title but there does not appear in the assignment any designation to show the name and address of the assignee or transferee, the Department shall be authorized and empowered to seize and hold said certificate of title until the assignor whose name appears in the assignment appears before the Department to complete the execution of the assignment or until evidence satisfactory to the Department is presented to the Department to show the name and address of the transferee. (1937, c. 407, s. 36; 1947, c. 219, ss. 4, 5; 1955, c. 554, ss. 5, 6; 1961, c. 360, s. 8; c. 835, s. 8; 1963, c. 552, ss. 3, 4.)

**Cross Reference.** — As to fees, see § 20-85.

**Editor's Note.** — The 1963 amendment substituted "card" for "certificate" in three places in subsection (a) and rewrote subsection (b).

For note as to the requirements of §§ 20-72 to 20-78, see 32 N.C.L. Rev. 545 (1954). For case law survey on time of acquisition of title to motor vehicles, see 41 N.C.L. Rev. 444 (1963).

**Warranty of Title and Statement of Liens and Encumbrances.** — Prior to the 1963 amendment to this section subsection (b) made it the duty of the vendor of a registered vehicle to endorse his certificate of title to the transferee with a statement of all liens or encumbrances, to be verified by the oath of the owner. *Home Indem. Co. v. West Trade Motors, Inc.*, 258 N.C. 647, 129 S.E.2d 248 (1963).

The seller of a motor vehicle was required to endorse, and deliver to or for the buyer, an assignment and warranty of title and a statement of all liens and encumbrances, even where a conditional sale was involved. *Seymour v. W. S. Boyd Sales Co.*, 257 N.C. 603, 127 S.E.2d 265 (1962), decided under this section as it stood before the 1963 amendment.

The effect of failure to list liens as required by this section before the 1963 amendment was a warranty that such liens did not exist. *Seymour v. W. S. Boyd Sales Co.*, 257 N.C. 603, 127 S.E.2d 265 (1962).

**Same—Strict Compliance Required.** — Strict compliance with the requirements of assignment and warranty of title and a statement of all liens and encumbrances is necessary in every sale of motor vehicles. *Seymour v. W. S. Boyd Sales Co.*, 257 N.C. 603, 127 S.E.2d 265 (1962), decided under this section as it stood before the 1963 amendment.

**Purchaser Must Secure Old Certificate of Title and Apply for New One.**—This

section and § 20-75 make it the duty of the purchaser to secure from his vendor the old certificate of title duly endorsed or assigned and to apply for a new certificate. They do not relate to the duty of the Department to issue a new certificate. *Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N.C. 87, 125 S.E.2d 369 (1962).

**When a sale is made to a dealer**, it is not necessary to transmit the certificate of title to the Department of Motor Vehicles until the dealer resells. *Home Indem. Co. v. West Trade Motors, Inc.*, 258 N.C. 647, 129 S.E.2d 248 (1963).

**Vesting of Title.**—Under subsection (b) of this section as amended in 1961 and before its amendment in 1963 the vesting of title was deferred until the purchaser had the old certificate endorsed to him and made application for a new certificate. *Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N.C. 87, 125 S.E.2d 369 (1962). See *Home Indem. Co. v. West Trade Motors, Inc.*, 258 N.C. 647, 129 S.E.2d 248 (1963).

**No Lien Created by Chattel Mortgage prior to Acquisition of Title.**—Where the purchaser of a motor vehicle executes a chattel mortgage which is registered prior to the acknowledgment of the assignment of the certificate of title by the seller and the forwarding of an application for a new certificate to the Department of Motor Vehicles, the chattel mortgage does not create a lien on the vehicle, since the purchaser, at the time it was executed, did not have title, and the instrument can operate only as a contract to execute a chattel mortgage upon the acquisition of title. *National Bank v. Greensboro Motor Co.*, 264 N.C. 568, 142 S.E.2d 166 (1965). As to perfecting security interest, see § 20-58 et seq.

**Applied in** *Hawkins v. M & J Fin. Corp.*, 238 N.C. 174, 77 S.E.2d 669 (1953) (as to subsection (b)).



**§ 20-73. New owner to secure new certificate of title.**—The transferee, within twenty (20) days after the purchase of any vehicle, shall present the certificate of title endorsed and assigned as hereinbefore provided, to the Department and make application for a new certificate of title for such vehicle except as otherwise permitted in G.S. 20-75 and 20-76. Any transferee willfully failing or refusing to make application for title shall be guilty of a misdemeanor. (1937, c. 407, s. 37; 1939, c. 275; 1947, c. 219, s. 6; 1961, c. 360, s. 9.)

**Burden Is on Vendee to Apply for New Certificate of Title.**—The burden is imposed on the vendee, or as this section describes him, transferee, to present the certificates and make application for a new certificate of title within twenty days, and a willful failure to do so is expressly declared to be a misdemeanor, and when the certificate of title is delivered to a lienholder, it is nonetheless the duty of the purchaser to see that the certificate is forwarded to the Department of Motor Vehicles. *Home Indem. Co. v. West Trade Motors, Inc.*, 258 N.C. 647, 129 S.E.2d 248 (1963).

**§ 20-74. Penalty for failure to make application for transfer within the time specified by law.**—It is the intent and purpose of this article that every new owner or purchaser of a vehicle previously registered shall make application for transfer of title within twenty days after acquiring same, or see that such application is sent in by the lien holder with proper fees, and responsibility for such transfer shall rest on the purchaser. Any person, firm or corporation failing to do so shall pay a penalty of two dollars (\$2.00) in addition to the fees otherwise provided in this article. It is further provided that any dealer or owner who shall knowingly make any false statement in any application required by this Department as to the date a vehicle was sold or acquired shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty days. All moneys collected under this section shall go to the State highway fund. (1937, c. 407, s. 38; 1939, c. 275; 1961, c. 360, s. 10.)

**Compliance with Registration Statutes Mandatory.**—It is manifest both from the express language of the registration statutes and from this companion penal enforcement provision that compliance with the registration statutes is mandatory and calls for substantial observance. *Hawkins*

**And Vendor Should Not Be Penalized for Vendee's Failure.**—There is nothing in the 1961 amendments to this part which suggests that dealer, a vendor, should be penalized and held liable because of the failure of a purchaser to perform his statutory duty. *Home Indem. Co. v. West Trade Motors, Inc.*, 258 N.C. 647, 129 S.E.2d 248 (1963).

**Application Must Be in Proper Form.**—The statute necessarily implies that the application for a new certificate should be in proper form. *Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N.C. 87, 125 S.E.2d 369 (1962).

*v. M & J Fin. Corp.*, 238 N.C. 174, 77 S.E.2d 669 (1953).

**Burden Is on Vendee to Apply for New Certificate of Title.**—See note to § 20-73.

**Cited in Community Credit Co. of Lenoir, Inc. v. Norwood, 257 N.C. 87, 125 S.E.2d 369 (1962).**

**§ 20-75. When transferee is a dealer.**—When the transferee of any vehicle registered under the foregoing provision of this article is a licensed dealer who holds the same for resale and operates the same only for purpose of demonstration under a dealer's number plate, such transferee shall not be required to register such vehicle nor forward the certificate of title to the Department as provided in § 20-73. To assign or transfer title or interest in such vehicle, the dealer shall execute in the presence of a person authorized to administer oaths a reassignment and warranty of title on the reverse of the certificate of title in form approved by the Department, including in such reassignment the name and address of the transferee, and title to such vehicle shall not pass or vest until such reassignment is executed and the motor vehicle delivered to the transferee.

The dealer transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security in-

terest in the motor vehicle is obtained from the transferee in payment of the purchase price or otherwise, the dealer shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together with the transferee's application for new certificate of title and necessary fees to the Department within twenty (20) days. Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a misdemeanor. (1937, c. 407, s. 39; 1961, c. 835, s. 9; 1963, c. 552, s. 5.)

**Cross Reference.**—See notes to §§ 20-72, 20-73.

**Editor's Note.**—The 1963 amendment rewrote this section, eliminating a sentence which had been added by the 1961 amendment.

**The custom of used car dealers to accept a blank endorsement of the title by the owner and to transfer title directly to**

a purchaser upon an anonymous notarization, is violative of the letter and spirit of our motor vehicle registration statutes and may not be asserted as ground for equitable estoppel. *Hawkins v. M & J Fin. Corp.*, 238 N.C. 174, 77 S.E.2d 669 (1953).

**Cited in** *Rushing v. Polk*, 258 N.C. 256, 128 S.E.2d 675 (1962).

**§ 20-76. Title lost or unlawfully detained; bond as condition to issuance of new certificate.**—(a) Whenever the applicant for the registration of a vehicle or a new certificate of title thereto is unable to present a certificate of title thereto by reason of the same being lost or unlawfully detained by one in possession, or the same is otherwise not available, the Department is hereby authorized to receive such application and to examine into the circumstances of the case, and may require the filing of affidavits or other information; and when the Department is satisfied that the applicant is entitled thereto and that § 20-72 has been complied with it is hereby authorized to register such vehicle and issue a new registration card, registration plate or plates and certificates of title to the person entitled thereto, upon payment of proper fees.

(b) Whenever the applicant for a new certificate of title is unable to satisfy the Department that he is entitled thereto as provided in subsection (a) of this section, the applicant may nevertheless obtain issuance of a new certificate of title by filing a bond with the Department as a condition to the issuance thereof. The bond shall be in the form prescribed by the Department and shall be executed by the applicant. It shall be accompanied by the deposit of cash with the Department, be executed as surety by a person, firm or corporation authorized to conduct a surety business in this State or be in the nature of a real estate bond as described in G.S. 20-279.24 (a). The bond shall be in an amount equal to one and one-half times the value of the vehicle as determined by the Department and conditioned to indemnify any prior owner or lien holder, any subsequent purchaser of the vehicle or person acquiring any security interest therein, and their respective successors in interest, against any expense, loss or damage, reason of the issuance of the certificate of title to the vehicle or on account of any defect in or undisclosed security interest in the right, title and interest of the applicant in and to the vehicle. Any person damaged by issuance of the certificate of title shall have a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this State and the currently valid certificate of title is surrendered to the Department, unless the Department has been notified of the pendency of an action to recover on the bond. (1937, c. 407, s. 40; 1947, c. 219, s. 7; 1961, c. 360, s. 11; c. 835, s. 10.)

**Cross Reference.**—As to proper fee, see § 20-85.

**§ 20-77. Transfer by operation of law; liens.**—(a) Whenever the title or interest of an owner in or to a vehicle shall pass to another by operation of law, as upon order in bankruptcy, execution sale, repossession upon default in

performing the terms of a lease or executory sales contract, or otherwise than by voluntary transfer, the transferee shall secure a new certificate of title upon proper application, payment of the fees provided by law, and presentation of the last certificate of title, if available and such instruments or documents of authority or certified copies thereof as may be sufficient or required by law to evidence or effect a transfer of interest in or to chattels in such cases.

(b) In the event of transfer as upon inheritance, devise or bequest, the Department shall, upon receipt of a certified copy of a will, letters of administration and/or a certificate from the clerk of the superior court showing that the motor vehicle registered in the name of the decedent owner has been assigned to his widow as part of her year's support, transfer both title and license as otherwise provided for transfers. However, if no administrator has qualified or the clerk of the superior court refuses to issue a certificate, the Department may upon affidavit showing satisfactory reasons therefor effect such transfer; provided, that if a decedent dies intestate leaving surviving a spouse and a minor child or children, or a spouse and a child or children mentally incompetent, whether of age or not, and no guardian has been appointed for said child or children, the surviving spouse shall be authorized to transfer the interest of the child or children in said motor vehicle, as provided in this subsection, to a purchaser thereof, but the new title so issued shall not affect the validity nor be in prejudice of any creditor's lien.

(c) Mechanic's or Storage Lien.—In any case where a vehicle is sold under a mechanic's or storage lien, the Department shall be given a twenty-day notice as provided in § 20-114.

(d) The owner of a garage, storage lot or other place of storage shall have a lien for his lawful and reasonable storage charges on any motor vehicle deposited in his place of storage by the owner or any other person having lawful authority to make such storage, and may retain possession of the motor vehicle until such storage charges are paid. If the storage charges are not paid when due, the garage owner or other storage keeper may satisfy said lien as follows:

- (1) The garage owner or storage keeper shall give written notice to the person who made the storage, to the registered owner, if known, and to any other persons known to claim any lien on or other interest in the motor vehicle. Such notice shall be given by delivery to the person, or by registered letter addressed to the last known place of business or abode of the person to be notified.
- (2) The notice shall contain a description of the motor vehicle; an itemized statement of the claim for storage charges; a demand that the storage charges be paid on or before a day specified, not less than ten days from the delivery of the notice if it is personally delivered or from the time when the notice should reach its destination according to the due course of post if the notice is sent by mail; and a statement that unless the storage claim is paid on or before the day specified, the motor vehicle will be advertised for sale and sold at auction at a specified time and place.
- (3) If payment is not made by the day specified in the notice, a sale of the motor vehicle may be had to satisfy the lien. The sale shall be held at the place where the vehicle was stored, or if such place is manifestly unsuitable for the purpose, at the courthouse in the county where vehicle was stored. The advertisement of such sale shall contain the name and address of the registered owner of the vehicle, if known or ascertainable; the name and address of the person who made the storage; a description of the motor vehicle, including the make, year of make, model, motor number, serial number and license number, if any; a statement of the amount of storage charges; and the place, date and hour of sale. The advertisement shall be published



once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than three conspicuous public places in such place. A copy of said advertisement shall be sent to the Commissioner of Motor Vehicles at least twenty days prior to the sale. From the proceeds of the sale the garage owner or storage keeper shall satisfy his lien, including the reasonable charges of notice, advertisement and sale. The balance, if any, shall be held by the garage owner or storage keeper and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the motor vehicle. If no claim is made for said balance within ten days the garage owner or storage keeper shall immediately pay such balance into the office of the clerk of the superior court of the county wherein the sale was held, and the clerk shall hold said money for twelve months for delivery on demand to person entitled thereto, and if no claim is made within said period, said balance shall escheat to the University of North Carolina.

- (4) At any time before the motor vehicle is so sold any person claiming a right of property or possession therein may pay the garage owner or storage keeper the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment, and upon receiving such payment, the garage owner or storage keeper shall deliver the motor vehicle to the person making such payment if he is a person entitled to the possession thereof.
- (5) An operator of a place of business for garaging, repairing, parking or storing vehicles for the public, in which a vehicle remains unclaimed for thirty (30) days, shall within five (5) days after the expiration of that period, report the vehicle as unclaimed to the Department.

A vehicle left by any person whose name and address are known to, or are furnished from a reliable method of identification to, the operator or his employee is not considered unclaimed. A person who fails to report a vehicle as unclaimed in accordance with this section forfeits all liens for storage, and, in addition thereto, the failure to make the report required by this section shall constitute a misdemeanor or punishable by a fine not to exceed fifty dollars (\$50.00) or thirty (30) days imprisonment, or both, in the discretion of the court.

Where no specific agreement is made at the time of storage regarding the time when storage charges shall be due, such charges shall be due ninety days after the storage commenced.

(e) Any person, who shall sell a vehicle to satisfy a mechanic's or storage lien or any person who shall sell a vehicle as upon order in bankruptcy, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise by operation of law, shall remove any license plates attached thereto and return them to the Department. (1937, c. 407, s. 41; 1943, c. 726; 1945, cc. 289, 714; 1955, c. 296, s. 1; 1959, c. 1264, s. 3; 1961, c. 360, ss. 12, 13.)

**Cross Reference.**—As to fees required, see § 20-85.

**§ 20-78. When Department to transfer registration and issue new certificate; recordation.**—(a) The Department, upon receipt of a properly endorsed certificate of title, application for transfer thereof and payment of all

proper fees, shall issue a new certificate of title as upon an original registration. The Department, upon receipt of an application for transfer of registration plates, together with payment of all proper fees, shall issue a new registration card transferring and assigning the registration plates and numbers thereon as upon an original assignment of registration plates.

(b) The Department shall maintain a record of certificates of title issued and may, after three (3) years from year of issue, at its discretion, destroy such records, maintaining at all times the records of the last two owners.

The Commissioner is hereby authorized and empowered to provide for the photographic or photostatic recording of certificate of title records in such manner as he may deem expedient. The photographic or photostatic copies herein authorized shall be sufficient as evidence in tracing of titles of the motor vehicles designated therein, and shall also be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted. (1937, c. 407, s. 42; 1943, c. 726; 1947, c. 219, s. 8; 1961, c. 360, s. 14.)

**Cross Reference.**—As to required fees, Corp., 238 N.C. 174, 77 S.E.2d 669 (1953). see § 20-85.

**Cited in** Morrissey v. Crabtree, 143 F.

**Applied in** Hawkins v. M & J Fin. Supp. 105 (M.D.N.C. 1956).

#### Part 5. Issuance of Special Plates.

**§ 20-79. Registration by manufacturers and dealers.** — (a) Every manufacturer of or dealer in motor vehicles, trailers or semi-trailers shall apply to the Motor Vehicle Department for a license as such upon official forms and shall in his application give the name of the manufacturer or dealer and his bona fide address of each partner; if a corporation, the name of the corporation and the state of incorporation; the bona fide address of the place of business; whether a dealer in new vehicles or in used vehicles and shall state how long in business. Upon receipt of said application the Department shall upon the payment of fees as required by law issue a license to such applicant, together with number plates, which plates shall bear thereon a distinctive number, the name of this State, which may be abbreviated, the year for which issued, together with the word dealer or a distinguishing symbol indicating that such plate or plates are issued to a dealer. The plates so issued may during the calendar year for which issued be transferred from one vehicle to another owned and operated by such manufacturer or dealer. The license and plates issued under this section shall be in lieu of the registration of such vehicle.

Any person to whom license and number plates are issued under the provisions of this subsection upon discontinuing business as a dealer or manufacturer shall forthwith surrender to the Department license and all number plates so issued to him.

No person, firm, or corporation shall engage in the business of buying, selling, distributing or exchanging motor vehicles, trailers or semi-trailers in this State unless he or it qualifies for and obtains the license required by this section.

Any person, firm, or corporation violating any provision of this subsection shall be guilty of a misdemeanor and for each offense shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00).

(b) Every manufacturer of or dealer in motor vehicles shall obtain and have in his possession a certificate of title issued by the Department to such manufacturer or dealer of each vehicle, owned and operated upon the highways by such manufacturer or dealer, except that a certificate of title shall not be required or issued for any new vehicle to be sold as such by a manufacturer or dealer prior to the sale of such vehicle by the manufacturer or dealer; and except that any dealer or any employee of any dealer may operate any motor vehicle, trailer or semi-trailer, the property of the dealer, for the purpose of furthering the business interest of the dealer in the sale, demonstration and servicing

of motor vehicles, trailers and semi-trailers, of collecting accounts, contacting prospective customers and generally carrying out routine business necessary for conducting a general motor vehicle sales business: Provided, that no use shall be made of dealer's demonstration plates on vehicles operated in any other business dealers may be engaged in: Provided further, that dealers may allow the operation of motor vehicles owned by dealers and displaying dealer's demonstration plates in the personal use of persons other than those employed in the dealer's business: Provided further, that said persons shall, at all times while operating a motor vehicle under the provisions of this section, have in their possession a certificate on such form as approved by the Commissioner from the dealer, which shall be valid for not more than ninety-six hours.

(c) No manufacturer of or dealer in motor vehicles, trailers or semi-trailers shall cause or permit any such vehicle owned by such person to be operated or moved upon a public highway without there being displayed upon such vehicle a number plate or plates issued to such person, either under § 20-63 or under this section.

(d) No manufacturer of or dealer in motor vehicles, trailers or semi-trailers shall cause or permit any such vehicle owned by such person or by any person in his employ, which is in the personal use of such person or employee, to be operated or moved upon a public highway with a "dealer" plate attached to such vehicle.

(e) Transfer of Dealer Registration.—No change in the name of a firm, partnership or corporation, nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered a new business; but if any one or more of the partners remain in the firm, or if there is change in ownership of less than a majority of the stock, if a corporation, the business shall be regarded as continuing and the dealers' plates originally issued may continue to be used. (1937, c. 407, s. 43; 1947, c. 220, s. 2; 1949, c. 583, s. 3; 1951, c. 985, s. 2; 1959, c. 1264, s. 3.5; 1961, c. 360, s. 15.)

Cited in *Hawkins v. M & J Fin. Corp.*, 238 N.C. 174, 77 S.E.2d 669 (1953); *Fin. Co. v. Dick*, 256 N.C. 669, 124 S.E.2d 862 (1962); *Smart* 862 (1962).

**§ 20-79.1. Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates.**—(a) The Department may, subject to the limitations and conditions hereinafter set forth, deliver temporary registration plates or markers designed by said Department to a dealer duly registered under the provisions of this article who applies for at least twenty-five such plates or markers and who encloses with such application a fee of one dollar (\$1.00) for each plate or marker for which application is made. Such application shall be made upon a form prescribed and furnished by the Department. Dealers, subject to the limitations and conditions hereinafter set forth, may issue such temporary registration plates or markers to owners of vehicles, provided that such owners shall comply with the pertinent provisions of this section.

(b) Every dealer who has made application for temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to him, and shall also maintain in permanent form a record of all temporary registration plates or markers issued by him, and in addition thereto, shall maintain in permanent form a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers that the Department may require. Each record shall be kept for a period of at least one (1) year from the date of entry of such record. Every dealer shall allow full and free access to such records during regular business hours, to duly authorized representative of the Department and to peace officers.

(c) Every dealer who issues temporary registration plates or markers shall also issue a temporary registration certificate upon a form furnished by the De-



partment and deliver with the registration plate or marker to the owner and shall on the day that he issued such plate or marker, send to the Department a copy of the temporary registration issuance.

(d) A dealer shall not issue, assign, transfer, or deliver temporary registration plates or markers to anyone other than a bona fide purchaser or owner of a vehicle being sold by such dealer, nor shall a dealer issue a temporary registration plate or marker without first obtaining from said purchaser or owner a written application for the titling and registration of the purchased vehicle with the prescribed fees therefor, which application and fees the said dealer shall immediately forward to the Department by mail or messenger or by messenger to a local license agency; nor shall a dealer issue a temporary registration plate to anyone purchasing a vehicle that has unexpired registration plates, which registration plates are to be transferred to such purchaser; nor shall a dealer lend to anyone or use on any vehicle that he may own, temporary registration plates or markers: Provided that dealers are hereby authorized to issue temporary markers to nonresidents for the purpose of removing a vehicle purchased in this State, without collecting a registration fee or requiring an application for titling and registration. It shall be unlawful for any person to issue any temporary registration plate or marker containing any misstatement of fact or knowingly insert any false information upon the face thereof.

(e) Every dealer who issues temporary plates or markers shall insert clearly and indelibly on the face of each temporary registration plate or marker the date of issuance and expiration, the make, motor and serial numbers of the vehicle for which issued and such other information as the Department may require.

(f) If the Department finds that the provisions of this section or the directions of the Department are not being complied with by the dealer, he may suspend, after a hearing, the right of a dealer to issue temporary registration plates or markers.

(g) Every person to whom temporary registration plates or markers have been issued shall permanently destroy such temporary registration plates or markers immediately upon receiving the annual registration plates from the Department: Provided, that if the annual registration plates are not received within twenty (20) days of the issuance of the temporary registration plates or markers, the owner shall, notwithstanding, immediately upon the expiration of such twenty (20)-day period, permanently destroy the temporary registration plates or markers.

(h) Temporary registration plates or markers shall expire and become void upon the receipt of the annual registration plates from the Department, or upon the rescission of a contract to purchase a motor vehicle, or upon the expiration of twenty (20) days from the date of issuance, depending upon whichever event shall first occur. No refund or credit or fees paid by dealers to the Department for temporary registration plates or markers shall be allowed, except in the event that the Department discontinues the issuance of temporary registration plates or markers or unless the dealer discontinues business. In this event the unissued registration plates or markers with the unissued registration certificates shall be returned to the Department and the dealer may petition for a refund.

(i) A temporary registration plate or marker may be used on the vehicle for which issued only and may not be transferred, loaned, or assigned to another. In the event a temporary registration plate or marker or temporary registration certificate is lost or stolen, the owner shall permanently destroy the remaining plate or marker or certificate and no operation of the vehicle for which the lost or stolen registration certificate, registration plate or marker has been issued shall be made on the highways until the regular license plate is received and attached thereto.

(j) The Commissioner of Motor Vehicles shall have the power to make such

rules and regulations, not inconsistent herewith, as he shall deem necessary for the purpose of carrying out the provisions of this section.

(k) The provisions of §§ 20-63, 20-71, 20-110 and 20-111 shall apply in like manner to temporary registration plates or markers as is applicable to nontemporary plates. (1957, c. 246, s. 1; 1963, c. 552, s. 8.)

**Editor's Note.**—The 1963 amendment added the proviso to the first sentence of subsection (d).

**Cited in** Home Indem. Co. v. West Trade Motors, Inc., 258 N.C. 647, 129 S.E.2d 248 (1963).

**§ 20-79.2. Transporter registration.**—(a) A person engaged in a business requiring the limited operation of motor vehicles to facilitate the foreclosure or repossession of such motor vehicles may apply to the Commissioner for special registration to be issued to and used by such person upon the following conditions:

- (1) **Application for Registration.**—Only one application shall be required from each person, and such application for registration under this section shall be filed with the Commissioner of Motor Vehicles in such form and detail as the Commissioner shall prescribe, setting forth:
  - a. The name and residence address of applicant; if an individual, the name under which he intends to conduct business; if a partnership, the name and residence address of each member thereof, and the name under which the business is to be conducted; if a corporation, the name of the corporation and the name and residence address of each of its officers.
  - b. The complete address or addresses of the place or places where the business is to be conducted.
  - c. Such further information as the Commissioner may require.
- (2) Applications for registration under this section shall be verified by the applicant, and the Commissioner may require the applicant for registration to appear at such time and place as may be designated by the Commissioner for examination to enable him to determine the accuracy of the facts set forth in the written application, either for initial registration or renewal thereof.
- (3) **Fees.**—The annual fee for such registration under this section or renewal thereof shall be fifteen dollars (\$15.00), plus an annual fee of five dollars (\$5.00) for each set of plates. The application for registration and number plates shall be accompanied by the required annual fee. There shall be no refund of registration fee or fees for number plates in the event of suspension, revocation or voluntary cancellation of registration. There shall be no quarterly reduction in fees under this section.
- (4) **Issuance of Certificate.**—If the Commissioner approves the application, he shall issue a registration certificate in such form as he may prescribe. A registrant shall notify the Commissioner of any change of address of his principal place of business within thirty (30) days after such change is made, and the Commissioner shall be authorized to cancel the registration upon failure to give such notice.
- (5) **Use.**—Transporter number plates issued under this section may be transferred from vehicle to vehicle, but shall be used only for the limited operation of vehicles in connection with foreclosure or repossession of vehicles owned or controlled by the registrant.
- (6) **Suspension, Revocation or Refusal to Issue or to Renew a Registration.**—The Commissioner may deny the application of any person for registration under this section and may suspend or revoke a registration or refuse to issue a renewal thereof if he determines that such applicant or registrant has:

- a. Made a material false statement in his application;
- b. Used or permitted the use of number plates contrary to law;
- c. Been guilty of fraud or fraudulent practices; or
- d. Failed to comply with any of the rules and regulations of the Commissioner for the enforcement of this section or with any provisions of this chapter applicable thereto.

(b) The Commissioner of Motor Vehicles may make all rules and regulations he may deem necessary for the proper administration of this section, particularly with regard to the requirements of evidence of financial responsibility of applicants for transporter plates. (1961, c. 360, s. 21.)

**§ 20-80. National guard plates.**—The Commissioner shall cause to be made each year a sufficient number of automobile license plates to furnish each officer of the North Carolina national guard with a set thereof, said license plates to be in the same form and character as other license plates now or hereafter authorized by law to be used upon private passenger vehicles registered in this State, except that such license plates shall bear on the face thereof the following words, "National Guard." The said license plates shall be issued only to officers of the North Carolina national guard, and for which license plates the Commissioner shall collect fees in an amount equal to the fees collected for the licensing and registration of private vehicles. The Adjutant General of North Carolina shall furnish to the Commissioner each year, prior to the date that licenses are issued, a list of the officers of the North Carolina national guard, which said list shall contain the rank of each officer listed in the order of his seniority in the service, and the said license plates shall be numbered, beginning with the number two hundred and one and in numerical sequence thereafter up to and including the number sixteen hundred, according to seniority, the senior officer being issued the license bearing the numerals two hundred and one. (1937, c. 407, s. 44; 1941, c. 36; 1949, c. 1130, s. 7; 1955, c. 490; 1961, c. 360, s. 16.)

**§ 20-81. Official license plates.**—Official license plates issued as a matter of courtesy to State officials shall be subject to the same transfer provisions as provided in G.S. 20-64. (1937, c. 407, s. 45; 1961, c. 360, s. 17.)

**§ 20-81.1. Special plates for amateur radio operators.**—(a) Every owner of a motor vehicle which is primarily used for pleasure or communication purposes who holds an unrevoked and unexpired amateur radio license of a renewable nature, issued by the Federal Communications Commission, shall, upon payment of registration and licensing fees for such vehicle as required by law and an additional fee of one dollar (\$1.00), be issued plates of similar size and design as the regular registration plates provided for by G.S. 20-63 or other provisions of law, upon which shall be inscribed, in lieu of the usual registration number, the official amateur radio call letters of such persons as assigned by the Federal Communications Commission.

(b) Application for special registration plates shall be made on forms which shall be provided by the Department of Motor Vehicles and shall contain proof satisfactory to the Department that the applicant holds an unrevoked and unexpired official amateur radio license and shall state the call letters which have been assigned to the applicant. Applications must be filed prior to 60 days before the day when regular registration plates for the year are made available to motor vehicle owners.

(c) Special registration plates issued pursuant to this section shall be replaced annually to the same extent as regular registration plates are replaced. These plates shall be valid during the year for which issued. If the amateur radio license of a person holding a special plate issued pursuant to this section shall be cancelled or rescinded by the Federal Communications Commission, such person shall immediately return the special plates to the Department of Motor Vehicles.



(d) The provisions of this section shall apply to calendar years beginning after December 31, 1955. The Department of Motor Vehicles is authorized to, and shall, make such provisions prior to January 1, 1956, as are necessary for the issuance for the year 1956 of the special plates provided for in this section. (1951, c. 1099; 1955, c. 291; 1961, c. 360, s. 18.)

**§ 20-81.2. Special plates for historic vehicles.**—Notwithstanding any other provisions of this chapter, special license plates shall be issued upon application with respect to any motor vehicle of the age of thirty-five years or more from the date of manufacture. Such license plates shall be of the same colors as the regular license plates and shall be issued in a separate numerical series. On the plate there shall be printed the words "Horseless Carriage," the license plate serial number, the words "North Carolina" or the letters "N. C.," and the appropriate calendar year. In lieu of other registration fees, the annual license registration fee for such vehicle shall be five dollars (\$5.00). All other provisions of this chapter not inconsistent herewith shall be applicable to such motor vehicles.

The Commissioner of Motor Vehicles is hereby authorized to make such rules as, in his discretion, may seem necessary with respect to applications for special plates, time for making applications and other matters necessary for the efficient administration of this section. (1955, c. 1339.)

**§ 20-82. Manufacturer or dealer to keep record of vehicles received or sold.**—Every manufacturer or dealer shall keep a record of all vehicles received or sold containing such information regarding same as the Department may require. (1937, c. 407, s. 46; 1965, c. 106.)

**Editor's Note.**—The 1965 amendment, which referred to this section as "G.S. 20-82, as the same appears in the 1963 Cumulative Supplement," deleted the former first and second sentences, requiring every

manufacturer or dealer to make a monthly report to the Department of the sale or transfer of any motor vehicle, trailer or semi-trailer.

#### Part 6. Vehicles of Nonresidents of State, etc.

**§ 20-83. Registration by nonresidents.**—(a) When a resident carrier of this State interchanges a properly licensed trailer or semi-trailer with another carrier who is a resident of another state, and adequate records are on file in his office to verify such interchanges, the North Carolina licensed carrier may use the trailer licensed in such other state the same as if it is his own during the time the nonresident carrier is using the North Carolina licensed trailer.

(b) Motor vehicles duly registered in a state or territory which are not allowed exemptions by the Commissioner, as provided for in the preceding paragraph, desiring to make occasional trips into or through the State of North Carolina, or operate in this State for a period not exceeding thirty days, may be permitted the same use and privileges of the highways of this State as provided for similar vehicles regularly licensed in this State, by procuring from the Commissioner trip licenses upon forms and under rules and regulations to be adopted by the Commissioner, good for use for a period of thirty days upon the payment of a fee in compensation for said privilege equivalent to one-tenth of the annual fee which would be chargeable against said vehicle if regularly licensed in this State: Provided, however, that nothing in this provision shall prevent the extension of the privileges of the use of the roads of this State to vehicles of other states under the reciprocity provisions provided by law: Provided further, that nothing herein contained shall prevent the owners of vehicles from other states from licensing such vehicles in the State of North Carolina under the same terms and the same fees as like vehicles are licensed by owners resident in this State.

(c) Every nonresident, including any foreign corporation carrying on business within this State and owning and operating in such business any motor vehicle,

trailer or semi-trailer within this State, shall be required to register each such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this State. (1937, c. 407, s. 47; 1941, cc. 99, 365; 1957, c. 681, s. 1; 1961, c. 642, s. 4.)

**Editor's Note.** — For comment on the 1941 amendments, see 19 N.C.L. Rev. 514.

**§ 20-84. Vehicles owned by State, municipalities or orphanages, etc.**—The Department upon proper proof being filed with it that any motor vehicle for which registration is herein required is owned by the State or any department thereof, or by any county, township, city or town, or by any board of education, or by any orphanage or civil air patrol, or incorporated emergency rescue squad, shall collect one dollar for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the State or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the State or some department thereof or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church owned bus used exclusively for transporting children and parents to Sunday School and church services and for no other purpose.

In lieu of the annual one dollar (\$1.00) registration provided for in this section, the Department may for the license year 1950 and thereafter provide for a permanent registration of the vehicles described in this section and issue permanent registration plates for such vehicles. The permanent registration plates issued pursuant to this paragraph shall be of a distinctive color and shall bear thereon the word "permanent." Such plates shall not be subject to renewal and shall be valid only on the vehicle for which issued. For the permanent registration and issuance of permanent registration plates provided for in this paragraph, the Department shall collect a fee of one dollar (\$1.00) for each vehicle so registered and licensed.

The provisions of this section are hereby made applicable to vehicles owned by a rural fire department, agency or association

The Department of Motor Vehicles shall issue to the North Carolina Tuberculosis Association, Incorporated, or any local chapter or association of said corporation, for a fee of one dollar (\$1.00) for each plate a permanent registration plate which need not be thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is owned by said North Carolina Tuberculosis Association, Incorporated, or any local chapter or local association thereof and operated exclusively in this State for the purpose of diagnosis, treatment and discovery of tuberculosis. The initial one dollar (\$1.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plates issued for such vehicle operated as a mobile X-ray unit, and such plates need not thereafter be renewed, and such plates should be valid only on the vehicle for which issued and then only so long as the vehicle shall be operated for the purposes above described and for which the plates were originally issued. (1937, c. 407, s. 48; 1939, c. 275; 1949, c. 583, s. 1; 1951, c. 388; 1953, c. 1264; 1955, cc. 368, 382.)

**Cross Reference.**—As to school trucks, etc., exempt, see § 115-128.

**§ 20-84.1. Permanent plates for city busses.**—The Department may for the license year 1950 and thereafter provide for a permanent registration and issue permanent registration plates for city busses and trackless trolleys when such busses and trolleys are operated under franchises authorizing the use of

city streets, but no bus or trackless trolley shall be registered or licensed under this section if it is operated under a franchise authorizing an interstate operation. The permanent registration plates issued pursuant to the provisions of this section shall be of a distinctive color and shall bear thereon the word "permanent." Such plates shall not be subject to renewal and shall be valid only on the vehicle for which issued. For the permanent registration and issuance of permanent registration plates as provided for in this section, the Department shall collect a fee of one dollar for each vehicle so registered and licensed. (1949, c. 583, s. 6.)

#### Part 6.1. Automobile Utility Trailers.

##### § 20-84.2. Definition, classification, licensing and registration.—

The term "automobile utility trailer" when used herein shall mean and include any trailers suitable for towing by a private passenger automobile, the use of which is confined to the private hauling by private passenger automobile of personal property for intrastate or interstate use. The term "automobile utility trailer" shall not include trailers or semitrailers rented or leased to any person for use by such lessee in the furtherance of or incident to any commercial or industrial enterprise or for use in connection with any business or occupation carried on in intrastate or interstate commerce by the lessee.

Passenger automobile utility trailers owned or operated by any nonresident person or firm engaged in the business of leasing such trailers for use in intrastate or interstate commerce shall be extended full reciprocity and exempted from registration fees only in instances where:

- (1) Such person or firm has validly licensed all automobile utility trailers owned by him in the state wherein the owner actually resides; provided, that such state affords equal recognition, either in fact or in law, to such trailers licensed in the State of North Carolina and operating similarly within the owner's state of residence; and further provided, that such person or firm is not engaged in this State in the business of renting automobile utility trailers; except, that this subdivision (1) shall not apply to any intrastate rental of an auto utility trailer where the destination rental station is more distant from the licensing state than the originating rental station; or where
- (2) Such person or firm has validly licensed in the State of North Carolina the average number of automobile utility trailers operated in and through the State during the preceding licensing year. In such instance, said person shall register with the Department of Motor Vehicles the fact that he is engaged in such business and shall file data in such form and verified in such manner as shall be required by the Department, estimating the average number of automobile utility trailers he operates in and through the State during the year. The Department may, in its discretion, then determine the average number of trailers used by the owner during the licensing year in and through the State and such determination shall be final. Upon payment by the owner of the prescribed fee, the Department shall issue registration certificates and license plates for the average number of automobile utility trailers used by the owner. Thereafter, all trailers properly identified and licensed in any state, territory, province, county or the District of Columbia, and belonging to such owner, shall be permitted to operate in this State on an interstate or intrastate basis; provided, that such trailers are towed by private passenger cars fully registered and licensed in this State or in another state and legally operated in this State under the reciprocity laws of this State. Except, this subdivision (2) shall not apply to any intrastate rental of an auto utility trailer where the destination



rental station is more distant from the licensing state than the originating rental station. (1959, c. 1066.)

Part 7. Title and Registration Fees.

§ 20-85. **Schedule of fees.**—There shall be paid to the Department for the issuance of certificates of title, transfer of registration and replacement of registration plates fees according to the following schedules:

- |   |        |
|---|--------|
| (1) Each application for certificate of title .....                       | \$1.00 |
| (2) Each application for duplicate or corrected certificate of title .... | 1.00   |
| (3) Each application of reposessor for certificate of title .....         | 1.00   |
| (4) Each transfer of registration .....                                   | 1.00   |
| (5) Each set of replacement registration plates .....                     | 1.00   |
| (6) Each application for duplicate registration certificate .....         | .50    |
| (7) Each application for recording supplementary lien .....               | 1.00   |
| (8) Each application for removing a lien from a certificate of title      | 1.00   |

The fees collected under subdivisions (7) and (8) of this section shall be placed in a special fund designated the "Lien Recording Fund" and shall be used under the direction and supervision of the Assistant Director of the Budget for the administration of the laws of this State relating to the perfection of security interest in vehicles. (1937, c. 407, s. 49; 1943, c. 648; 1947, c. 219, s. 9; 1955, c. 554, s. 4; 1961, c. 360, s. 19; c. 835, s. 11.)

§ 20-86. **Penalty for engaging in a "for hire" business without proper license plates.**—Any person, firm or corporation engaged in the business of transporting persons or property for compensation, except as otherwise provided in this article, shall, before engaging in such business, pay the license fees prescribed by this article and secure the license plates provided for vehicles operated for hire. Any person, firm or corporation operating vehicles for hire without having paid the tax prescribed or using private plates on such vehicles shall be liable for an additional tax of twenty-five dollars (\$25.00) for each vehicle in addition to the normal fees provided in this article; provided, that when the vehicle subject to for hire license has attached thereto a trailer or semitrailer, each unit in the combination, including the tractor, trailer and/or semitrailer, shall be subject to the additional tax as herein prescribed; provided, further that the additional tax herein provided shall not apply to trailers having a gross weight of 3,000 pounds or less. (1937, c. 407, s. 50; 1965, c. 659.)

**Editor's Note.** — The 1965 amendment added the proviso at the end of the last sentence.

§ 20-87. **Passenger vehicle registration fees.**—There shall be paid to the Department annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

- (1) **Common Carriers of Passengers.**—Common carriers of passengers shall pay an annual license tax of forty-five cents (45¢) per hundred pounds weight of each vehicle unit, and in addition thereto one and one-half per cent (1½%) of the gross revenue derived from such operation: Provided, said additional one and one-half per cent (1½%) shall not be collectible unless and until and only to the extent that such amount exceeds the license tax of forty-five cents (45¢) per hundred pounds: Provided further, that common carriers of passengers operating from a point or points in this State to another point or other points in this State shall be liable for a tax of one and one-half per cent (1½%) on the gross revenue earned in such intrastate hauls. Common carriers of passengers operating between a point or points within this State and a point or points without this State shall be liable for a one and

one-half per cent ( $1\frac{1}{2}\%$ ) tax only on that proportion of the gross revenue earned between terminals in this State and terminals outside this State that the mileage in North Carolina bears to the total mileage between the respective terminals. Common carriers of passengers operating through this State from a point or points outside this State to a point or points outside this State shall be liable for a one and one-half per cent ( $1\frac{1}{2}\%$ ) tax on that proportion of the gross revenue earned between such terminals as the mileage in North Carolina bears to the total mileage between the respective terminals. In no event shall the tax paid by such common carriers of passengers be less than forty-five cents (45¢) per hundred pounds weight for each vehicle. The tax prescribed in this subdivision is levied as compensation for the use of the highways of this State and for the special privileges extended such common carriers of passengers by this State.

- (2) U-Drive-It Passenger Vehicles.—U-drive-it passenger vehicles shall pay the following tax:

Motorcycles: 1-passenger capacity .....	\$12.00
2-passenger capacity .....	15.00
3-passenger capacity .....	18.00

Automobiles: \$30.00 per year for each vehicle of nine passenger capacity or less, and vehicles of over nine passenger capacity shall be classified as busses and shall pay \$1.90 per hundred pounds empty weight of each vehicle.

- (3) For Hire Passenger Vehicles.—For hire passenger vehicles shall be taxed at the rate of \$60.00 per year for each vehicle of nine passenger capacity or less and vehicles of over nine passenger capacity shall be classified as busses and shall be taxed at a rate of \$1.90 per hundred pounds of empty weight per year for each vehicle; provided, however, no license shall issue for the operation of any taxicab until the governing body of the city or town in which such taxicab is principally operated, if the principal operation is in a city or town, has issued a certificate showing

- a. That the operator of such taxicab has provided liability insurance or other form of indemnity for injury to persons or damage to property resulting from the operation of such taxicab, in such amount as required by the city or town, and
- b. That the convenience and necessity of the public requires the operation of such taxicab.

All persons operating taxicabs on January first, one thousand nine hundred and forty-five shall be entitled to a certificate of necessity and convenience for the number of taxicabs operated by them on such date, unless since said date the license of such person or persons to operate a taxicab or taxicabs has been revoked or their right to operate has been withdrawn or revoked; provided that all persons operating taxicabs in Edgecombe, Lee, Nash and Union counties on January first, one thousand nine hundred and forty-five shall be entitled to certificates of necessity and convenience only with the approval of the governing authority of the town or city involved.

A taxicab shall be defined as any motor vehicle, seating nine or fewer passengers, operated upon any street or highway on call or demand, accepting or soliciting passengers indiscriminately for hire between such points along streets or highways as may be directed by the passenger or passengers so being transported, and shall not include motor vehicles or motor vehicle carriers as defined in §§ 62-121.5 through 62-121.79. Such taxicab shall not be construed to be a common carrier nor its operator a public service corporation.

- (4) Excursion Passenger Vehicles.—Excursion passenger vehicles shall be taxed at the rate of \$8.00 per passenger capacity, with a minimum charge of \$25.00, but such vehicles operating under a certificate as a restricted common carrier under §§ 62-121.5 through 62-121.79, shall also be liable to the gross revenue six per cent tax to the extent it exceeds the tax herein levied under the same provisions provided for common carriers of passengers.
- (5) Private Passenger Vehicles.—There shall be paid to the Department annually, as of the first day of January, for the registration and licensing of private passenger vehicles, fees according to the following classifications and schedules:

Vehicles weighing 3500 pounds or less .....	\$10.00
Vehicles weighing 3501 pounds to 4500 pounds .....	12.00
Vehicles weighing 4501 pounds and over .....	15.00

provided, where there are models of the same make automobiles that fall within two or more of the above classes, the average weight based on the 1946 and immediate four prior years models shall be ascertained and all models of that make automobile shall be taxed according to the schedule provided above in which the average weight falls. In event there are any make automobiles in operation with models falling into two or more of the above classes that did not manufacture any models in 1946, the average weight based on the last five years in which said automobile was manufactured, shall be ascertained and all models of that make automobile shall be taxed according to the schedule provided above in which the average falls. Provided further, where new make automobiles are produced after 1946 which has models falling into two or more of the above classes, the average weight shall be ascertained and all models of that make automobile shall be taxed according to the schedule provided above in which the average weight falls. Provided, that a fee of only one dollar shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during World War II, so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.
- (6) Private Motorcycles.—The tax on private passenger motorcycles shall be five dollars (\$5.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the tax shall be ten dollars (\$10.00).
- (7) Manufacturers and Motor Vehicle Dealers.—Manufacturers and dealers in motor vehicles, trailers and semi-trailers for license and for one set of dealer's plates shall pay the sum of twenty-five dollars (\$25.00), and for each additional set of dealer's plates the sum of one dollar (\$1.00).
- (8) Driveaway Companies.—Any person, firm or corporation engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this State for compensation shall pay as a registration fee and for one set of plates one hundred dollars (\$100.00) and for each additional set of plates five dollars (\$5.00).
- (9) House Trailers.—In lieu of other registration and license fees levied on house trailers under this section or § 20-88 of the General Statutes, the registration and license fee on house trailers shall be three dollars (\$3.00) for the license year or any portion thereof.
- (10) Special Mobile Equipment.—The tax for special mobile equipment shall be three dollars (\$3.00) for the license year or any portion thereof; provided, that vehicles on which are permanently mounted feed mixers, grinders and mills and on which are also transported molasses or



other similar type feed additives for use in connection with the feed mixing, grinding or milling process shall be taxed an additional sum of twenty-five dollars (\$25.00) for the license year or any portion thereof, in addition to the basic three dollar (\$3.00) tax provided for herein. (1937, c. 407, s. 51; 1939, c. 275; 1943, c. 648; 1945, c. 564, s. 1; c. 576, s. 2; 1947, c. 220, s. 3; c. 1019, ss. 1-3; 1949, c. 127; 1951, c. 819, ss. 1, 2; 1953, c. 478; c. 826, s. 4; 1955, c. 1313, s. 2; 1957, c. 1340, s. 3; 1961, c. 1172, s. 1a; 1965, c. 927.)

**Cross Reference.**—As to liability insurance required of persons engaged in the business of renting motor vehicles, see § 20-281 et seq.

**Editor's Note.**—The 1965 amendment substituted "\$30.00" for "\$60.00" in subdivision (2).

**Former Law.**—For case citing corresponding provisions of former law, see *Safe Bus v. Maxwell*, 214 N.C. 12, 197 S.E. 567 (1938).

**Cited in** *Victory Cab Co. v. Charlotte*, 234 N.C. 572, 68 S.E.2d 433 (1951); *Airlines Transp., Inc. v. Tobin*, 198 F.2d 249 (4th Cir. 1952); *Pilot Freight Carriers, Inc. v. Scheidt*, 263 N.C. 737, 140 S.E.2d 383 (1965).

**§ 20-88. Property hauling vehicles.**—(a) Determination of Weight.—For the purpose of licensing, the weight of self-propelled property-carrying vehicles shall be the empty weight and heaviest load to be transported, as declared by the owner or operator; provided, that any determination of weight shall be made only in units of one thousand pounds or major fraction thereof, weights of over five hundred pounds counted as one thousand and weights of five hundred pounds or less disregarded. The declared gross weight of self-propelled property-carrying vehicles operated in conjunction with trailers or semitrailers shall include the empty weight of the vehicles to be operated in the combination and the heaviest load to be transported by such combination at any time during the registration period, except that the gross weight of a trailer or semitrailer is not required to be included when the operation is to be in conjunction with a self-propelled property-carrying vehicle which is licensed for six thousand (6,000) pounds or less gross weight and the gross weight of such combination does not exceed nine thousand (9,000) pounds, except wreckers as defined under G.S. 20-38 (39).

(b) There shall be paid to the Department annually, as of the first day of January, for the registration and licensing of self-propelled property-carrying vehicles, fees according to the following classification and schedule and upon the following conditions:

SCHEDULE OF WEIGHTS AND RATES

	Rates Per Hundred Pounds Gross Weight			
	<i>Farmer</i>	<i>Private Hauler</i>	<i>Contract Carrier</i>	<i>Common Carrier of Property (Deposit)</i>
Not over 4,500 pounds	\$0.15	\$0.30	\$0.75	\$0.60
4,501 to 8,500 pounds inclusive	.20	.40	.75	.60
8,501 to 12,500 pounds inclusive	.25	.50	1.00	.60
12,501 to 16,500 pounds inclusive	.35	.70	1.15	.60
Over 16,500 pounds	.40	.80	1.40	.60

- (1) The minimum fee for a vehicle licensed under this subsection shall be ten dollars (\$10.00) at the farmer rate and twelve dollars (\$12.00) at the private hauler, contract carrier and common carrier rates.
- (2) The term "farmer" as used in this subsection means any person en-

gaged in the raising and growing of farm products on a farm in North Carolina not less than ten acres in area, and who does not engage in the business of buying products for resale.

- (3) License plates issued at the farmer rate shall be placed upon trucks and truck tractors that are operated exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies and not operated in hauling for hire.
- (4) Farm products means any food crop, cattle, hogs, poultry, dairy products, flower bulbs (but does not mean nursery products) and other agricultural products designed to be used for food purposes, including in the term farm products also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products.
- (5) The Department shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" plates, when vehicle bearing such plates shall be sold or transferred.
- (6) There shall be paid to the Department annually as of the first of January, the following fees for "wreckers" as defined under § 20-38 (39): A wrecker fully equipped weighing seven thousand pounds or less, fifty dollars (\$50.00); wreckers weighing in excess of seven thousand pounds shall pay one hundred dollars (\$100.00). Fees to be prorated quarterly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer's license plate to tow a vehicle for a customer.

(c) There shall be paid to the Department annually, as of the first day of January, for the registration and licensing of trailers or semitrailers, three dollars (\$3.00) for any part of the license year for which said license is issued.

(d) Rates on trucks, trailers and semi-trailers wholly or partially equipped with solid tires shall be double the above schedule.

(e) Common Carriers of Property.—Common carriers of property shall pay an annual license tax as per the above schedule of rates for each vehicle unit, and in addition thereto six per cent of the gross revenue derived from such operations: Provided, said additional six per cent shall not be collectible unless and until and only to the extent that such amount exceeds the license tax or deposit per the above schedule: Provided, further, common carriers of property operating from a point or points in this State to another point or points in this State shall be liable for a tax of six per cent on the gross revenue earned in such intrastate hauls. Common carriers of property operating between a point or points within this State and a point or points without this State shall be liable for a six per cent tax only on that proportion of the gross revenue earned between terminals in this State and terminals outside this State that the mileage in North Carolina bears to the total mileage between the respective terminals. Common carriers of property operating through this State from a point or points outside this State to a point or points outside this State shall be liable for a six per cent tax on that proportion of the gross revenue earned between such terminals as the mileage in North Carolina bears to the total mileage between the respective terminals. In no event shall the tax paid by such common carriers of property be less than the license tax or deposit shown on the above schedule, except where a franchise is hereafter issued by the Utilities Commission for service over a route within the State which is not now served by any common carrier of property the six per cent gross revenue tax may be reduced to four per cent for the first two years only. The tax prescribed in this subsection is levied as compensation for the use of the highways of this State and for the special privileges extended such common carriers of property by this State. Common carriers of property operating from a point in this State to a point in another state over two or more routes, shall compute their mileage from the point of origin to the point of destination on the basis of the average mileage of all routes

used by them from the point in this State to the point outside of this State and this figure shall be used as the mileage between said points in determining the percentage of miles operated in North Carolina between said points.

In lieu of the six per cent gross revenue tax levied by this subsection and the deposit required by subsection (b) of this section, common carriers of property may elect to pay a flat rate according to the highest rate provided by subsection (b) of this section for vehicles and loads of the same gross weight operated by contract carriers. The election to so pay must be made at the time license plates are applied for and may not thereafter be changed during the license year except that for the license year 1949 such election, if one is made, must be made on or before July 1, 1949. Vehicles registered and licensed during the license year and after the election herein provided for has been made, must be registered and licensed and the operator shall pay taxes on the operation thereof according to the election made. A failure by a common carrier of property to make an election under this paragraph shall render such common carrier of property liable for the deposit required by subsection (b) of this section and the six per cent gross revenue tax levied by this subsection.

(f) Nonresident motor vehicle carriers which do not operate in intrastate commerce in this State, and the title to whose vehicles are not required to be registered under the provisions of this article, shall be taxed for the use of the roads in this State and shall pay the same fees therefor as are required with reference to like vehicles owned by residents of this State: Provided, that if any such fees as applied to nonresidents shall at any time become inoperative, such carriers shall be taxed for the use of the roads of this State as common carriers of property as provided above: Provided, further, that this provision shall not prevent the extension to vehicles of other states of the benefits of the reciprocity provisions provided by law.

(g) Contract carriers under the definitions of this article who receive and operate under a certificate or permit or other authority from the Utilities Commissioner as restricted common carriers under the provisions of §§ 62-121.5 through 62-121.79, shall, in addition to the rate of tax for contract carriers provided above, be subject to the gross six per cent tax to the extent that it exceeds the rate for contract carriers to be levied and collected in the same manner provided for common carriers of property, and the tax in the schedule provided for contract carriers shall be deemed a deposit only.

(h) Every person operating a motor vehicle upon the highways of the State equipped with motors of the diesel type shall make a report to the Commissioner upon forms to be prescribed and furnished by the Commissioner at least four times a year on dates to be designated by the Commissioner; and such reports shall show, among other things, the purchases of motor fuel for use in said diesel type motor and whether or not the tax levied upon motor fuels has been paid or assumed by the person from whom bought; and it shall be unlawful to operate any such motor equipment upon the highways of this State except with fuel upon which the tax has been paid. It shall be unlawful for any person, firm, or corporation operating such diesel type motor to fail, refuse, or neglect to make returns in accordance with the forms prescribed by the Commissioner; and any person knowingly making false returns shall be guilty of a felony. (1937, c. 407, s. 52; 1939, c. 275; 1941, cc. 36, 227; 1943, c. 648; 1945, c. 569, s. 1; c. 575, s. 1; c. 576, s. 3; c. 956, ss. 1, 2; 1949, cc. 355, 361; 1951, c. 583; c. 819, ss. 1, 2; 1953, c. 568; c. 694, s. 1; c. 1122; 1955, c. 554, s. 8; 1957, c. 681, s. 2; c. 1215; 1959, c. 571; 1961, c. 685; 1963, c. 501; c. 702, ss. 2, 3.)

**Editor's Note.**—For comment on the 1941 amendment, see 19 N.C.L. Rev. 514.

The first 1963 amendment added the next-to-last exception clause to the last sentence of subsection (a) and the second

1963 amendment added the last exception clause thereto. The second 1963 amendment also added subdivision (6) at the end of subsection (b).

**"Terminals."**—The word "terminal," as



used in subsection (e), means the point of origin or place where the carrier took possession of the shipment, or the point to which the transportation company makes delivery, the final destination of the shipment. *Pilot Freight Carriers, Inc. v. Scheidt*, 263 N.C. 737, 140 S.E.2d 383 (1965).

**Computation of Tax.**—Until the legislature prescribes some other rule for measurement, the tax must be computed by ascertaining the miles actually traveled by outbound shipments from the place where the carrier takes possession of the shipment, the point of origin, to the State line; and for inbound shipments, the miles actually traveled from the State line to the

place where the carrier surrenders possession of the shipment to the consignee, the point of destination. The miles the shipment actually moves in this State is the numerator. The total miles actually traveled by the shipment from the point of origin to the point of destination is the denominator. That fraction determines the portion of the revenue derived from each shipment which is subject to North Carolina's six per cent tax. *Pilot Freight Carriers, Inc. v. Scheidt*, 263 N.C. 737, 140 S.E.2d 383 (1965).

**Cited in** *Equipment Fin. Corp. v. Scheidt*, 249 N.C. 334, 106 S.E.2d 555 (1959).

**§ 20-88.1. Driver Training and Safety Education Fund.**—Beginning July 1, 1958, each and every passenger or property-carrying vehicle registering with the Department of Motor Vehicles, for which the registration tax is now being paid at the annual rate of ten dollars (\$10.00) or more, shall pay an additional annual registration tax of one dollar (\$1.00). The revenue derived from the additional tax of one dollar (\$1.00) shall be placed in a separate fund to finance a program of driver training and safety education at the public high schools of the State, and the amounts so collected shall be transferred periodically to the account of the State Board of Education. In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of the State for all persons of provisional license age. Such courses as shall be developed shall be made available to all physically and mentally qualified persons of provisional license age, including public school students, nonpublic school students and out of school youths under 18 years of age. In addition to the revenue derived from the annual additional registration tax of one dollar (\$1.00), the State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds which may become available for its use for said purpose. (1957, c. 682, s. 1; 1965, c. 410, s. 1.)

**Editor's Note.**—Section 2 of the act inserting this section, which provided that no credit for courses in driver training should be allowed towards meeting graduation requirements, was repealed by s. 2 of c. 410, Session Laws 1965.

The 1965 amendment rewrote this section, with the exception of the first two sentences therein, and substituted "July" for "January" near the beginning of the first sentence.

**§ 20-89. Method of computing gross revenue of common carriers of passengers and property.**—In computing the gross revenue of common carriers of passengers and common carriers of property, revenue derived from the transportation of United States mail or other United States government services shall not be included. All revenue earned both within and without this State from the transportation of persons or property, except as herein provided, by common carriers of passengers and common carriers of property, whether on fixed schedule routes or by special trips or by auxiliary vehicles not licensed as common carriers of property, whether owned by the common carrier of property or hired from another for the transportation of persons or property within the limits of the designated franchise route shall be included in the gross revenue upon which said tax is based. Provided, however, that whenever any person licensed as a common carrier of property transports his own property, other than for his own use, he shall be liable for a tax on such transportation, computed at six per-

cent (6%) of the gross charges authorized by the Utilities Commission or Interstate Commerce Commission on such operation if it had been for hire; and common carriers of property shall maintain accurate records of all operations involving transportation of their own property, in order that said tax may be correctly computed, paid and audited.

When vehicles are leased from other operators who are licensed in this State as contract carriers, for hire passenger or common carriers of property any amounts paid to such operators under said lease may be deducted by the lessees from gross revenue on which tax is based in the event a copy of the lease and adequate records and receipts are maintained so as to clearly reflect such payments. Any revenue earned by a common carrier of property under a lease or rental shall be included in the gross revenue upon which said tax is based but revenue earned by a common carrier of passengers from coach rentals shall not be included in gross revenue on which tax is based. (1937, c. 407, s. 53; 1943, c. 726; 1945, c. 414, s. 2; c. 575, s. 2; 1951, c. 819, ss. 1, 2½.)

**§ 20-90. Due date of franchise tax.**—The additional tax on common carriers of passengers and common carriers of property shall become due and payable on or before the thirtieth day of the month following the month in which it accrues.

Whenever a contract carrier or a flat rate common carrier of property becomes a regular common carrier of property subject to the six per cent (6%) gross revenue tax under this chapter during the license renewal period, December 1 to January 31, said carrier's gross revenue for the six per cent (6%) tax purpose shall be all the revenue earned from operations on and after the January 1 following the carrier's change to a regular common carrier if such change is made in December and shall be all the revenue earned from operations on and after the January 1 preceding the carrier's change to a regular common carrier if such change is made in January.

Whenever a regular common carrier of property subject to the six per cent (6%) gross revenue tax under this chapter becomes a flat rate common carrier of property or a contract carrier during the license renewal period, December 1 to January 31, said carrier's gross revenue for the six per cent (6%) tax purposes shall be all the revenue earned from operations up to and including operations on the December 31 following the carrier's change to a flat rate common carrier or a contract carrier if such change is made in December and shall be all the revenue earned from operations up to and including operations on the December 31 preceding the carrier's change to a flat rate common carrier of property or a contract carrier if such change is made in January. (1937, c. 407, s. 54; 1951, c. 729; c. 819, s. 1; 1955, c. 1313, s. 2.)

**§ 20-91. Records and reports required of franchise carriers.**—(a) Every common carrier of passengers and common carrier of property shall keep a record of all business transacted and all revenue received on such forms as may be prescribed by or satisfactory to the Commissioner, and such records shall be preserved for a period of three years, and shall at all times during the business hours of the day be subject to inspection by the Commissioner or his deputies or such other agents as may be duly authorized by the Commissioner. Any operator of such a franchise line failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court.

(b) All common carriers of passengers and common carriers of property shall, on or before the thirtieth day of each month, make a report to the Department of gross revenue earned and gross mileage operated during the month previous, in such manner as the Department may require and on such forms as the Department shall furnish.

(c) It shall be the duty of the Commissioner, by competent auditors, to have



the books and records of every common carrier of passengers and common carrier of property examined at least once each year to determine if such operators are keeping complete records as provided by this section of this article, and to determine if correct reports have been made to the State Department of Motor Vehicles covering the total amount of tax liability of such operators.

(d) If any common carrier of passengers or common carrier of property shall fail, neglect, or refuse to keep such records or to make such reports or pay tax due as required, and within the time provided in this article, the Commissioner shall immediately inform himself as best he may as to all matters and things required to be set forth in such records and reports, and from such information as he may be able to obtain, determine and fix the amount of the tax due the State from such delinquent operator for the period covering the delinquency, adding to the tax so determined and as a part thereof an amount equal to five per cent (5%) of the tax, to be collected and paid. The said Commissioner shall proceed immediately to collect the tax including the additional five per cent (5%). Any such common carrier of property or common carrier of passengers, having no records on the basis of which the Commissioner can determine the amount of the tax due by such carrier, shall be assessed on each vehicle at the rate applicable for contract carriers, and any bonds or deposits theretofore made shall be applied on such assessment and any further amount shall be collected as provided by law.

(e) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Commissioner of Motor Vehicles, any deputy, assistant, agent, clerk, other officer, employee, or former officer or employee, to divulge or make known in any manner the amount of gross revenue or tax paid by any common carrier of passengers or common carrier of property as set forth or disclosed in any report or return required in remitting said tax, or as otherwise disclosed. Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of such reports or returns by the Governor, Attorney General, Utilities Commission, or their or its duly authorized representatives; or the inspection by a legal representative of the State of the report or return of any common carrier of passengers or common carrier of property which shall bring an action to set aside or review the tax based thereon, or against which action or proceeding has been instituted to recover any tax or penalty imposed by this article. Any person, officer, agent, clerk, employee, or former officer or employee violating the provisions of this section shall be guilty of a misdemeanor. Nothing in this subsection or in any other law shall prevent the exchange of information between the Department of Motor Vehicles and the Department of Revenue when such information is needed by either or both of said departments for the purposes of properly enforcing the laws with the administration of which either or both of said departments is charged. (1937, c. 407, s. 55; 1939, c. 275; 1941, c. 36; 1943, c. 726; 1945, c. 575, s. 3; 1947, c. 914, s. 2; 1951, c. 190, s. 1; c. 819, s. 1; 1955, c. 1313, s. 2.)

**§ 20-91.1. Taxes to be paid; suits for recovery of taxes.**—No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this article. Whenever a person shall have a valid defense to the enforcement of the collection of a tax assessed or charged against him or his property, such person shall pay such tax to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have in the premises, and he may, at any time within 30 days after such payment, demand the same in writing from the Commissioner of Motor Vehicles; and if the same shall not be refunded within 90 days thereafter, may sue such official in the courts of the State for the amount so demanded. Such suit must be brought in



the Superior Court of Wake County, or in the county in which the taxpayer resides. (1951, c. 1011, s. 1.)

**§ 20-91.2. Overpayment of taxes to be refunded with interest.**—If the Commissioner of Motor Vehicles discovers from the examination of any report, or otherwise, that any taxpayer has overpaid the correct amount of tax (including penalties, interest and costs, if any), such overpayment shall be refunded to the taxpayer within 60 days after it is ascertained together with interest thereon at the rate of six per cent (6%) per annum: Provided, that interest on any such refund shall be computed from a date ninety (90) days after date tax was originally paid by the taxpayer. Provided, further, that demand for such refund is made by the taxpayer within three years from the date of such overpayment or the due date of the report, whichever is later. (1951, c. 1011, s. 1.)

**§ 20-92. Revocation of franchise registration.**—The failure of any common carrier of passengers or any common carrier of property to pay any tax levied under this article, and/or to make reports as is required, shall constitute cause for revocation of registration and franchise, and the Commissioner is hereby authorized to seize the registration plates of any such delinquent carrier and require the cessation of the operation of such vehicles, and the Utilities Commission may revoke any franchise or permit issued such carrier. (1937, c. 407, s. 56; 1945, c. 575, s. 4; 1951, c. 819, s. 1.)

**§ 20-93. Bond or deposit required.**—The Commissioner, before issuing any registration plates to a common carrier of passengers or a common carrier of property, shall either satisfy himself of the financial responsibility of such carrier or require a bond or deposit in such amount as he may deem necessary to insure the collection of the tax imposed by this section. (1937, c. 407, s. 57; 1951, c. 819, s. 1.)

**§ 20-94. Partial payments.**—In the purchase of licenses, where the gross amount of the license to any one owner amounts to more than four hundred dollars (\$400.00), half of such payment may, if the Commissioner is satisfied of the financial responsibility of such owner, be deferred until June first in any calendar year upon the execution to the Commissioner of a draft upon any bank or trust company upon forms to be provided by the Commissioner in an amount equivalent to one-half of such tax, plus a carrying charge of one-half of one per cent ( $\frac{1}{2}$  of 1%): Provided, that any person using any tag so purchased after the first day of June in any such year without having first provided for the payment of such draft, shall be guilty of a misdemeanor. No further license plates shall be issued to any person executing such a draft after the due date of any such draft so long as such draft or any portion thereof remains unpaid. Any such draft being dishonored and not paid shall be subject to the penalties prescribed in § 20-178 and shall be immediately turned over by the Commissioner to his duly authorized agents and/or the State Highway Patrol, to the end that this provision may be enforced. When the owner of the vehicles for which a draft has been given sells or transfers ownership to all vehicles covered by the draft, such draft shall become payable immediately, and such vehicles shall not be transferred by the Department until the draft has been paid. (1937, c. 407, s. 58; 1943, c. 726; 1945, c. 49, ss. 1, 2; 1947, c. 219, s. 10; 1953, c. 192.)

**§ 20-95. Licenses for less than a year.**—Licenses issued on or after April first of each year and before July first for all vehicles, except two-wheel trailers under one thousand five hundred pounds weight pulled by passenger cars, shall be three-fourths of the annual fee. Licenses issued on or after July first and before October first, except two-wheel trailers under one thousand five hundred pounds weight pulled by passenger cars, shall be one-half the annual fee. Licenses issued on or after October first, except on two-wheel trailers under one

thousand five hundred pounds weight pulled by passenger cars, shall be one-fourth of the annual fee. (1937, c. 407, s. 59; 1947, c. 914, s. 3.)

**§ 20-96. Overloading.**—It is the intent of this section that every owner of a motor vehicle shall procure license in advance to cover the empty weight and maximum load which may be carried. Any owner failing to do so, and whose vehicle shall be found in operation on the highway over the weight for which such vehicle is licensed, shall pay the penalties prescribed in § 20-118. Nonresidents operating under the provisions of § 20-83 shall be subject to the additional tax provided in this section when their vehicles are operated in excess of the licensed weight or, regardless of the licensed weight, in excess of the maximum weight provided for in § 20-118. Any resident or nonresident owner of a vehicle that is found in operation on a highway designated by the State Highway Commission as a light traffic highway and along which signs are posted showing the maximum legal weight on said highway with a load in excess of the weight posted for said highway, shall be subject to the penalties provided in § 20-118. Any person who shall wilfully violate the provisions of this section shall be guilty of a misdemeanor in addition to being liable for the additional tax herein prescribed.

Any peace officer who discovers a property hauling vehicle being operated on the highways with an overload as described in this section or which is equipped with improper registration plates, or the owner of which is liable for any overload penalties or assessments applicable to the vehicle and due and unpaid for more than thirty (30) days, is hereby authorized to seize said property hauling vehicle and hold the same until the overload has been removed or proper registration plates therefor have been secured and attached thereto and the overloading penalty provided in this section and § 20-118 has been paid. Any peace officer seizing a property hauling vehicle under this provision, may, when necessary, store said vehicle and the owner thereof shall be responsible for all reasonable storage charges thereon. When any property hauling vehicle is seized, held, unloaded or partially unloaded under this provision, the load or any part thereof shall be cared for by the owner or operator of the vehicle without any liability on the part of the officer or of the State or any municipality because of damage to or loss of such load or any part thereof. (1937, c. 407, s. 60; 1943, c. 726; 1949, c. 583, s. 8; c. 1207, s. 4½; c. 1253; 1951, c. 1013, ss. 1-3; 1953, c. 694, ss. 2, 3; 1955, c. 554, s. 9; 1957, c. 65, s. 11; 1959, c. 1264, s. 5.)

**§ 20-97. Taxes compensatory; no additional tax.**—(a) All taxes levied under the provisions of this article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State highway fund; and no county or municipality shall levy any license or privilege tax upon the use of any motor vehicle licensed by the State of North Carolina, except that cities and towns may levy not more than one dollar (\$1.00) per year upon any such vehicle resident therein: Provided, however, that cities and towns may levy, in addition to the one dollar (\$1.00) per year, herein set forth, a sum not to exceed fifteen dollars (\$15.00) per year upon each vehicle operated in such city or town as a taxicab.

(b) No additional franchise tax, license tax, or other fee shall be imposed by the State against any franchise motor vehicle carrier taxed under this article nor shall any county, city or town impose a franchise tax or other fee upon them, except that cities and towns may levy a license tax not in excess of fifteen dollars (\$15.00) per year on each vehicle operated in such city as a taxicab as provided in subsection (a) hereof.

(c) In addition to the appropriation carried in the Appropriations Act there shall be appropriated to the Motor Vehicle Department the additional sum of fifteen thousand dollars (\$15,000.00) from the State highway fund: Provided, that such additional sum shall be made available only in the event that the regular



appropriation is insufficient and it shall be determined by the Director of the Budget that such additional amount is necessary to carry out the provisions of this article. (1937, c. 407, s. 61; 1941, c. 36; 1943, c. 639, ss. 3, 4.)

**Editor's Note.**—For comment on the 1943 amendment, see 21 N.C.L. Rev. 358.

**Municipalities** are prohibited by this section from levying a license or privilege tax for use of its streets by motor trucks. *C. D. Kenny Co. v. Brevard*, 217 N.C. 269, 7 S.E.2d 542 (1940).

**Historical Background for Subsections (a) and (b).** — See *Victory Cab Co. v. Charlotte*, 234 N.C. 572, 68 S.E.2d 433 (1951).

**May Not Impose Additional License Tax on Vehicles for Hire.**—This section expressly prohibits a municipality from levying a license or privilege tax in excess of \$1.00 upon the use of any motor vehicle licensed by the State, and must be construed with and operates as an exception to, and limitation upon the general power to levy license and privilege taxes upon businesses, trades and professions granted by charter and § 160-56, and provisions of a municipal ordinance imposing a license tax upon the operation of passenger vehicles for hire in addition to the \$1.00 theretofore imposed by it upon motor vehicles generally, is void, nor may the additional municipal tax be sustained upon the theory that it is a tax upon the business of operating a motor vehicle for hire rather than ownership of the vehicle, since the word "business" and the word "use" as

used in the sections mean the same thing. *Cox v. Brown*, 218 N.C. 350, 11 S.E.2d 152 (1940).

An examination of the legislative history of this section shows a fixed and unvarying legislative policy to curb the powers of municipalities in taxing motor vehicles of all kinds, including taxicabs. *Victory Cab Co. v. Charlotte*, 234 N.C. 572, 68 S.E.2d 433 (1951).

In view of the limitations imposed by subsections (a) and (b) of this section fees collected by a city in excess of \$16.00 for each cab may not be justified as items of revenue. *Victory Cab Co. v. Charlotte*, 234 N.C. 572, 68 S.E.2d 433 (1951). See note under subdivision (36a) of § 160-200.

**Taxes Finance Construction and Maintenance of Highways.**—The construction and maintenance of this State's highways is financed, in part, by taxes based on the use of the highways by motor vehicles. *Pilot Freight Carriers, Inc. v. Scheidt*, 263 N.C. 737, 140 S.E.2d 383 (1965).

**Former Law.**—For cases decided under the corresponding provisions of the former law, see *State v. Fink*, 179 N.C. 712, 103 S.E. 16 (1920); *Southeastern Express Co. v. City of Charlotte*, 186 N.C. 668, 120 S.E. 475 (1923); *State v. Jones*, 191 N.C. 371, 131 S.E. 734 (1926).

**§ 20-98. Tax lien.**—In the distribution of assets in case of receivership or insolvency of the owner against whom the tax herein provided is levied and in the order of payment thereof, the State shall have priority over all other debts or claims except prior recorded liens or liens given by statute an express priority. (1937, c. 407, s. 62.)

**§ 20-99. Remedies for the collection of taxes.**—(a) If any tax imposed by this chapter, or any other tax levied by the State and payable to the Commissioner of Motor Vehicles, or any portion of such tax, be not paid within thirty days after the same becomes due and payable, and after the same has been assessed, the Commissioner of Motor Vehicles shall issue an order under his hand and official seal, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the taxpayer found within his county for the payment of the amount thereof, with the added penalties, additional taxes, interest, and cost of executing the same, and to return to the Commissioner of Motor Vehicles the money collected by virtue thereof within a time to be therein specified, not less than sixty days from the date of the order. The said sheriff shall, thereupon, proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the order, to be collected in the same manner. Upon the issuance of said order to the sheriff, in the event the delinquent taxpayer shall be the operator of any common carrier of passengers



or common carrier of property vehicle, the franchise certificate issued to such operator shall become null and void and shall be cancelled by the Utilities Commissioner, and it shall be unlawful for any such common carrier of passengers or the operator of any common carrier of property vehicle to continue the operation under said franchise.

(b) Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this chapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this chapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the set-off of any matured or unmatured indebtedness of the taxpayer to the garnishee. To effect such attachment or garnishment the Commissioner of Motor Vehicles shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Commissioner of Motor Vehicles or by any officer having authority to serve summonses. Said notice shall show:

- (1) The name of the taxpayer and his address, if known:
- (2) The nature and amount of the tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and
- (3) Shall be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no set-off against the taxpayer, he shall, within ten days after service of said notice, answer the same by sending to the Commissioner of Motor Vehicles by registered mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Commissioner with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Commissioner upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or set-off, he shall state the same in writing under oath, and, within ten days after service of said notice, shall send two copies of said statement to the Commissioner by registered mail; if the Commissioner admits such defense or set-off, he shall so advise the garnishee in writing within ten days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or set-off, and any amount attached or garnished hereunder which is not affected by such defense or set-off shall be remitted to the Commissioner as above provided in cases where the garnishee has no defense or set-off, and with like effect. If the Commissioner shall not admit the defense or set-off, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within ten days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Commissioner of Motor Vehicles by default or after hearing, the garnishee shall become liable for

the taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or set-off of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten per cent of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Commissioner of Motor Vehicles or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said taxes, interest, and penalties shall be those provided in § 105-267, as now or hereafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Commissioner, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by the General Statutes in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Commissioner at any time within twelve months after said intangible is paid to him and if the Commissioner finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by § 105-407 and if such payment is denied, said party may appeal from the determination of the Commissioner to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Commissioner is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied: Provided, however, that no salary or wage at the rate of less than two hundred dollars (\$200.00) per month, whether paid weekly or monthly, shall be attached or garnished under the provisions of this section.

(c) In addition to the remedy herein provided, the Commissioner of Motor Vehicles is authorized and empowered to make a certificate setting forth the essential particulars relating to the said tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the said certificate and index the same on the cross index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court; said tax shall become a lien on realty only from the date of the docket-

ing of such certificate in the office of the clerk of the superior court and on personality only from the date of the levy on such personality and upon execution thereon no homestead or personal property exemption shall be allowed.

(d) The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said taxes.

(e) The provisions, procedures, and remedies provided in this section shall be applicable to the collection of penalties imposed under the provisions of § 20-96, § 20-118, or any other provisions of this chapter imposing a tax or penalty for operation of a vehicle in excess of the weight limits provided in this chapter and the Commissioner is authorized to collect such taxes or penalties by the use of the procedure established in subsections (a), (b), (c) and (d) of this section. (1937, c. 407, s. 63; 1945, c. 576, s. 4; 1951, c. 819, s. 1; 1955, c. 554, s. 10.)

**Cross Reference.**—As to fees of sheriffs, see § 162-6.

**§ 20-100. Vehicles junked or destroyed by fire or collision.**—Upon satisfactory proof to the Commissioner that any motor vehicle, duly licensed, has been completely destroyed by fire or collision, or has been junked and completely dismantled so that the same can no longer be operated as a motor vehicle, the owner of such vehicle may be allowed on the purchase of a new license for another vehicle a credit equivalent to the unexpired proportion of the cost of the original license, dating from the first day of the next month after the date of such destruction. (1937, c. 407, s. 64; 1939, c. 369, s. 1.)

**§ 20-101. Vehicles to be marked.**—All motor vehicles licensed as common carriers of passengers, common carriers of property vehicles and contract carrier vehicles, shall have printed on the side thereof in letters not less than three inches in height the name and home address of the owner, or such other identification as the Utilities Commissioner may approve. (1937, c. 407, s. 65; 1951, c. 819, s. 1.)

#### Part 8. Anti-Theft and Enforcement Provisions.

**§ 20-102. Report of stolen and recovered motor vehicles.**—Every sheriff, chief of police, or peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall immediately report such theft to the Department. Any said officer upon receiving information that any vehicle, which he has previously reported as stolen, has been recovered, shall immediately report the fact of such recovery to the Department. (1937, c. 407, s. 66.)

**§ 20-102.1. False report of theft or conversion a misdemeanor.**—A person who knowingly makes to a peace officer or to the Department a false report of the theft or conversion of a motor vehicle shall be guilty of a misdemeanor, punishable within discretion of the court. (1963, c. 1083.)

**§ 20-103. Reports by owners of stolen and recovered vehicles.**—The owner, or person having a lien or encumbrance upon a registered vehicle which has been stolen or embezzled, may notify the Department of such theft or embezzlement, but in the event of an embezzlement may make such report only after having procured the issuance of a warrant for the arrest of the person charged with such embezzlement. Every owner or other person who has given any such notice must notify the Department of the recovery of such vehicle. (1937, c. 407, s. 67.)

**§ 20-104. Action by Department on report of stolen or embezzled vehicles.**—(a) The Department, upon receiving a report of a stolen or embezzled vehicle as hereinbefore provided, shall file and appropriately index the same and



shall immediately suspend the registration of the vehicle so reported, and shall not transfer the registration of the same until such time as it is notified in writing that such vehicle has been recovered.

(b) The Department shall at least once each month compile and maintain at its headquarters office a list of all vehicles which have been stolen or embezzled or recovered as reported to it during the preceding month, and such lists shall be open to inspection by any peace officer or other persons interested in any such vehicle. (1937, c. 407, s. 68.)

**§ 20-105. Unlawful taking of a vehicle.** — Any person who drives or otherwise takes and carries away a vehicle, not his own, without the consent of the owner thereof, and with intent to temporarily deprive said owner of his possession of such vehicle, without intent to steal the same, is guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person. Any person who assists in, or is a party or accessory to or an accomplice in any such unauthorized taking or driving, is guilty of a misdemeanor. A violation of this section shall be punishable by fine, or by imprisonment not exceeding two years, or both, in the discretion of the court. (1937, c. 407, s. 69; 1943, c. 543; 1965, c. 193.)

**Editor's Note.**—The 1965 amendment added the last sentence.

**Civil Liability of Owner for Injuries.**—The owner is not liable for an injury caused by his automobile while it is operated by another without his consent. This applies to parent and child and where the father forbade his child from taking his car he is not liable. *Linville v. Nissen*, 162 N.C. 95, 77 S.E. 1096 (1913), decided under earlier similar law.

**An indictment** charging larceny and receiving does not include a charge of driving a motor vehicle without the knowledge or consent of the owner, and a defendant charged in the indictment only with larceny

and receiving may not be convicted under this section. *State v. Stinnett*, 203 N.C. 829, 167 S.E. 63 (1933), decided under earlier similar law.

While the State's evidence was sufficient to support a conviction for violation of this section, (1) defendant was not charged with such violation, and (2) a defendant may not be convicted under this section upon trial on a bill of indictment for larceny. *State v. McCrary*, 263 N.C. 490, 139 S.E.2d 739 (1965).

**Applied in** *U Drive It Auto. Co. v. Atlantic Fire Ins. Co.*, 239 N.C. 416, 80 S.E.2d 35 (1954).

**§ 20-106. Receiving or transferring stolen vehicles.**—Any person who, with intent to procure or pass title to a vehicle which he knows or has reason to believe has been stolen or unlawfully taken, receives or transfers possession of the same from or to another, or who has in his possession any vehicle which he knows or has reason to believe has been stolen or unlawfully taken, and who is not an officer of the law engaged at the time in the performance of his duty as such officer, is guilty of a felony. (1937, c. 407, s. 70.)

**Cross Reference.**—As to felonies for which no specific punishment is prescribed, see § 14-2.

**§ 20-106.1. Fraud in connection with rental of motor vehicles.** — Any person with the intent to defraud the owner of any motor vehicle or a person in lawful possession thereof, who obtains possession of said vehicle by agreeing in writing to pay a rental for the use of said vehicle, and further agreeing in writing that the said vehicle shall be returned to a certain place, or at a certain time, and who wilfully fails and refuses to return the same to the place and at the time specified, or who secretes, converts, sells or attempts to sell the same or any part thereof shall be guilty of a felony. (1961, c. 1067.)

**§ 20-107. Injuring or tampering with vehicle.**—(a) Any person who either individually or in association with one or more other persons wilfully injures or tampers with any vehicles or breaks or removes any part or parts of or from a vehicle without the consent of the owner is guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, in the discretion of the court.

(b) Any person who with intent to steal, commit any malicious mischief, injury or other crime, climbs into or upon a vehicle, whether it is in motion or at rest, or with like intent attempts to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent sets in motion any vehicle while the same is at rest and unattended, is guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, in the discretion of the court. (1937, c. 407, s. 71; 1965, c. 621, s. 1.)

**Editor's Note.**—The 1965 amendment language beginning with the words "and added at the end of each subsection the upon conviction."

**§ 20-108. Vehicles without manufacturer's numbers.**—Any person who knowingly buys, receives, disposes of, sells, offers for sale, conceals, or has in his possession any motor vehicle, or engine removed from a motor vehicle, from which the manufacturer's serial or engine number or other distinguishing number or identification mark or number placed thereon under assignment from the Department has been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of said motor vehicle or engine is guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, in the discretion of the court. (1937, c. 407, s. 72; 1965, c. 621, s. 2.)

**Editor's Note.**—The 1965 amendment language beginning with the words "and upon conviction."

**§ 20-109. Altering or changing engine or other numbers.**—No person shall wilfully deface, destroy, or alter the manufacturer's serial or engine number or other distinguishing number or identification mark of a motor vehicle and neither shall any owner permit the defacing, destroying or alteration of such numbers or marks. No person shall place or stamp any serial, engine or other number or marking upon a vehicle, except one assigned thereto by the Department, and neither shall any owner permit the placing or stamping of any number or mark upon a motor vehicle except one assigned thereto by the Department. It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this section, and upon conviction said person shall be punished by a fine or imprisonment, or both, in the discretion of the court. (1937, c. 407, s. 73; 1943, c. 726; 1953, c. 216; 1965, c. 621, s. 3.)

**Editor's Note.**—The 1965 amendment added the last sentence in the section.

**§ 20-110. When registration shall be rescinded.**—(a) The Department shall rescind and cancel the registration of any vehicle which the Department shall determine is unsafe or unfit to be operated or is not equipped as required by law.

(b) The Department shall rescind and cancel the registration of any vehicle whenever the person to whom the registration card or registration number plates therefor have been issued shall make or permit to be made any unlawful use of the said card or plates or permit the use thereof by a person not entitled thereto.

(c) The Department shall rescind and cancel the license of any dealer to whom such license has been issued when such dealer allows his registration number plates to be used for other than demonstration purposes except as provided by § 20-79, fails to carry out the provisions of § 20-79 and § 20-82, or is convicted of a felony.

(d) The Department shall rescind and cancel the certificate of title to any vehicle which has been erroneously issued or fraudulently obtained or is unlawfully detained by anyone not entitled to possession.

(e) The Department shall rescind and cancel the license and dealer plates issued to any person when it is found that false or fraudulent statements have been made in the application for the same, and when and if it is found that the applicant does not have a bona fide place of business as provided by this article.

(f) The Department shall rescind and cancel the dealer's license and dealer's license plates issued to any person who knowingly delivers a certificate of title to a vehicle purchased from him which does not show a proper or correct transfer of ownership or who wilfully fails to deliver proper certificate of title to a motor vehicle sold by him.

(g) The Department shall rescind and cancel the registration plates issued to a common carrier of passengers or property which has been secured by such common carrier as provided under § 20-50 when the license is being used on a vehicle other than the one for which it was issued or which is being used by the lessor-owner after the lease with such lessee has been terminated.

(h) The Department may rescind and cancel the registration or certificate of title on any vehicle on the grounds that the application therefor contains any false or fraudulent statement or that the holder of the certificate was not entitled to the issuance of a certificate of title or registration.

(i) The Department may rescind and cancel the registration or certificate of title of any vehicle when the Department has reasonable grounds to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of certificate of title constituted a fraud against the rightful owner or person having a valid lien upon such vehicle.

(j) The Department may rescind and cancel the registration or certificate of title of any vehicle on the grounds that the registration of the vehicle stands suspended or revoked under the Motor Vehicle Laws of this State.

(k) The Department shall rescind and cancel a certificate of title when the Department finds that such certificate has been used in connection with the registration or sale of a vehicle other than the vehicle for which the certificate was issued. (1937, c. 407, s. 74; 1945, c. 576, s. 5; 1947, c. 220, s. 4; 1951, c. 985, s. 1; 1953, c. 831, s. 4; 1955, c. 294, s. 1; c. 554, s. 11.)

**§ 20-111. Violation of registration provisions.**—It shall be unlawful for any person to commit any of the following acts:

- (1) To operate or for the owner thereof knowingly to permit the operation upon a highway of any vehicle, trailer, or semi-trailer required to be registered and which is not registered or for which a certificate of title has not been issued, or which does not have attached thereto and displayed thereon the registration number plate or plates assigned thereto by the Department for the current registration year, subject to the provisions of G.S. 20-64 and 20-72 (a) and the exemptions mentioned in G.S. 20-65 and 20-79.
- (2) To display or cause or permit to be displayed or to have in possession any registration card, certificate of title or registration number plate knowing the same to be fictitious or to have been canceled, revoked, suspended or altered, or to wilfully display an expired license or registration plate on a vehicle knowing the same to be expired.
- (3) The giving, lending, or borrowing of a license plate for the purpose of using same on some motor vehicle other than that for which issued shall make the giver, lender, or borrower guilty of a misdemeanor, and upon conviction he shall be fined not more than fifty dollars (\$50.00), or imprisoned not more than thirty days. Where license plate is found being improperly used, such plate or plates shall be revoked or canceled,



and new license plates must be purchased before further operation of the motor vehicle.

- (4) To fail or refuse to surrender to the Department, upon demand, any title certificate, registration card or registration number plate which has been suspended, canceled or revoked as in this article provided.
- (5) To use a false or fictitious name or address in any application for the registration of any vehicle or for a certificate of title or for any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in any such application. A violation of this subdivision shall constitute a misdemeanor punishable in the discretion of the court not to exceed two years.
- (6) To give, lend, sell or obtain a certificate of title for the purpose of such certificate being used for any purpose other than the registration, sale, or other use in connection with the vehicle for which the certificate was issued. Any person violating the provisions of this subdivision shall be guilty of a misdemeanor. (1937, c. 407, s. 75; 1943, c. 592, s. 2; 1945, c. 576, s. 6; c. 635; 1949, c. 360; 1955, c. 294, s. 2; 1961, c. 360, s. 20.)

**§ 20-112. Making false affidavit perjury.**—Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this article to be sworn or affirmed to shall be guilty of perjury, and upon conviction shall be punishable by a fine and imprisonment as other persons committing perjury are punishable. (1937, c. 407, s. 76.)

**Cross References.**—As to punishment jury or the making of false affidavits, etc., for perjury, see § 14-209. As to revocation see § 20-17. of license in event of conviction of per-

**§ 20-113. Licenses protected.**—No person, partnership, association or corporation shall maintain an office or place of business in which or through which persons desiring transportation for themselves or their baggage are brought into contact by advertisement or otherwise with persons owning or operating motor vehicles and willing to transport other persons, or baggage, for compensation, or on a division of expense basis, unless the owner or operator of such motor vehicles furnishing the transportation has qualified under the tax provisions of this article for the class of service he holds himself out to perform. (1937, c. 407, s. 77.)

**§ 20-114. Duty of officer; manner of enforcement.**—(a) For the purpose of enforcing the provisions of this article, it is hereby made the duty of every police officer, every marshal, deputy marshal, or watchman of any incorporated city or village, and every sheriff, deputy sheriff, and all other lawful officers of any county, and every constable of any township, to arrest within the limits of their jurisdiction any person known personally to any such officer, or upon the sworn information of a creditable witness, to have violated any of the provisions of this article, and to immediately bring such offender before any justice of the peace or officer having jurisdiction, and any such person so arrested shall have the right of immediate trial, and all other rights given to any person arrested for having committed a misdemeanor. Every officer herein named who shall neglect or refuse to carry out the duties imposed by this chapter shall be liable on his official bond for such neglect or refusal as provided by law in like cases.

(b) It shall be the duty of all sheriffs, police officers, deputy sheriffs, deputy police officers, and all other officers within the State to co-operate with and render all assistance in their power to the officers herein provided for, and nothing in this article shall be construed as relieving said sheriffs, police officers, deputy

sheriffs, deputy police officers, and other officers of the duties imposed on them by this chapter.

(c) It shall also be the duty of every sheriff of every county of the State and of every police or peace officer of the State to make immediate report to the Commissioner of all motor vehicles reported to him as abandoned or that are seized by him for being used for illegal transportation of intoxicating liquors or other unlawful purposes, and no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation claiming a mechanic's or storage lien, or under judicial proceedings, until notice shall have been given the Commissioner at least twenty days before the date of such sale. (1937, c. 407, s. 78; 1943, c. 726.)

**Cross Reference.**—As to uniformed firemen enforcing motor vehicle laws and ordinances at fires, see § 20-114.1.

**§ 20-114.1. Uniformed firemen may direct traffic and enforce motor vehicle laws and ordinances at fires.**—In addition to other law enforcement officers, uniformed regular and volunteer firemen may direct traffic and enforce traffic laws and ordinances at the scene of fires in connection with their duties as firemen. Except as herein provided firemen shall not be considered law enforcement officers. (1961, c. 879.)

#### Part 9. The Size, Weight, Construction and Equipment of Vehicles.

**§ 20-115. Scope and effect of regulations in this title.**—It shall be unlawful and constitute a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this title, or any vehicle or vehicles which are not so constructed or equipped as required in this title, or the rules and regulations of the Commission adopted pursuant thereto and the maximum size and weight of vehicles herein specified shall be lawful throughout this State, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this article. (1937, c. 407, s. 79.)

**§ 20-116. Size of vehicles and loads.**—(a) The total outside width of any vehicle or the load thereon shall not exceed ninety-six inches, except as otherwise provided in this section: Provided that when hogsheads of tobacco are being transported, a tolerance of five inches shall be allowed.

(b) No passenger-type vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof.

(c) No vehicle, unladen or with load, shall exceed a height of thirteen feet, six inches. Provided, however, that neither the State of North Carolina nor any agency or subdivision thereof, nor any person, firm or corporation, shall be required to raise, alter, construct or reconstruct any underpass, wire, pole, trestle, or other structure to permit the passage of any vehicle having a height, unladen or with load, in excess of twelve feet, six inches. Provided further, that the operator or owner of any vehicle having an overall height, whether unladen or with load, in excess of twelve feet, six inches, shall be liable for damage to any structure caused by such vehicle having a height in excess of twelve feet, six inches. The term "automobile transport" as used in this subsection shall mean only vehicles engaged exclusively in transporting automobiles, trucks and other commercial vehicles.

(d) No vehicle, except where used in combination with another vehicle, shall exceed a length of thirty-five feet extreme over-all dimension, inclusive of front and rear bumpers: Provided, that a passenger bus having three (3) axles shall

not exceed forty (40) feet in length. A truck-tractor and semi-trailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.

(e) No combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of fifty-five feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided, that wreckers in an emergency may tow a combination tractor and trailer to the nearest feasible point for repair and/or storage: Provided, that the State Highway Commission shall have authority to designate any highways upon the State system as light-traffic roads when, in the opinion of the Commission, such roads are inadequate to carry and will be injuriously affected by the maximum load, size, and/or width of trucks or buses using such roads as herein provided for, and all such roads so designated shall be conspicuously posted as light-traffic roads and the maximum load, size and/or width authorized shall be displayed on proper signs erected thereon. Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of fifty-five (55) feet exclusive of front and rear bumpers. The operation of any vehicle whose gross load, size and/or width exceed the maximum shown on such signs over the roads thus posted shall constitute a misdemeanor: Provided further, that no standard concrete highway, or other highway built of material of equivalent durability, and not less than eighteen feet in width, shall be designated as a light-traffic road: Provided further, that the limitations placed on any road shall not be less than eighty per cent (80%) of the standard weight, unless there shall be available an alternate improved route of not more than twenty per cent (20%) increase in the distance; provided, however, that such restriction of limitations shall not apply to any county road, farm-to-market road, or any other road of the secondary system: Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three (3) in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of fifty (50) feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a drive-away service when no more than two saddle mounts are used and provided further that equipment used in said combination is approved by the safety regulations of the Interstate Commerce Commission and the safety regulations of the North Carolina Department of Motor Vehicles and the North Carolina State Highway Commission.

(f) The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle or the front bumper of such vehicle, if it is equipped with such a bumper.

(g) No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for



the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

(h) Wherever there exist two highways of the primary State Highway System of approximately the same distance between two or more points, the State Highway Commission shall have authority when in the opinion of the Commission, based upon engineering and traffic investigation, safety will be promoted or the public interest will be served thereby, to designate one of said highways the "truck route" between said points, and to prohibit the use of the other highway by heavy trucks or other vehicles of a gross vehicle weight or axle load limit in excess of a designated maximum. In such instances the highways so selected for heavy vehicle traffic shall be so designated as "truck routes" by signs conspicuously posted thereon, and the highways upon which heavy vehicle traffic is prohibited shall likewise be so designated by signs conspicuously posted thereon showing the maximum gross vehicle weight or axle load limits authorized for said highways. The operation of any vehicle whose gross vehicle weight or axle load exceed the maximum limits shown on such signs over the highway thus posted shall constitute a misdemeanor: Provided, that nothing herein shall prohibit a truck or other motor vehicle whose gross vehicle weight or axle load exceeds that prescribed for such highways from using such highway when the destination of such vehicle is located solely upon said highway, road or street: Provided, further, that nothing herein shall prohibit passenger vehicles or other light vehicles from using any highways so designated for heavy truck traffic.

(i) The total width of any vehicle propelled by electric power obtained from trolley wires, but not operated upon rails, commonly known as an electric trackless trolley coach, which is operated as a part of the general trackless trolley system of passenger transportation of the city of Greensboro and vicinity, shall not exceed one hundred and two inches, and the total length, inclusive of front and rear bumpers, of any such vehicle shall not exceed thirty-six feet, and the height of any such vehicle, exclusive of trolley pole for operating same, shall not exceed twelve feet, six inches.

(j) Self-propelled grain combines or other farm equipment self-propelled or otherwise, not exceeding fifteen and one-half feet in width may be operated on any highway, except a highway or section of highway that is a part of the National System of Interstate and Defense Highways; and provided, that such combines or equipment may be operated on numbered federal or State highways exclusive of the Interstate System, only by special permit as provided in G.S. 20-119; permits issued in compliance with G.S. 20-119 for equipment covered under this section may be on a seasonal basis: Provided, further, that all such combines or equipment which exceed ten feet in width may be so operated only under the following conditions:

- (1) Said equipment may only be so operated during daylight hours; and
- (2) Said equipment must display a red flag on front and rear, said flags shall not be smaller than three feet wide and four feet long and be attached to a stick, pole, staff, etc., not less than four feet long and shall be so attached to said equipment as to be visible for not less than 300 feet; and said equipment shall travel only on routes designated by the special permit required under this section and for distances not to exceed four miles; and
- (3) Equipment covered by this section requiring special permit to be operated on permissible or designated highways, which by necessity must travel more than four miles, must be preceded [preceded] at a distance of 300 feet and followed at a distance of 300 feet by a flagman either on foot or in a vehicle. Each flagman must carry and display, by hand or mounted on his vehicle, a red flag, not smaller than three feet wide and four feet long. Said flag shall be attached to a stick, pole, staff, etc., not less than three feet long and every such piece of equip-

ment so operated shall carry and display at least one red flag not less than three feet wide and four feet long. Equipment to be operated for a distance in excess of four miles may not be so operated on Saturdays, Sundays, or holidays; and

- (4) Every such piece of equipment so operated shall operate to the right of the center line when possible and practical. (1937, c. 246; c. 407, s. 80; 1943, c. 213, s. 1; 1945, c. 242, s. 1; 1947, c. 844; 1951, c. 495, s. 1; c. 733; 1953, cc. 682, 1107; 1955, c. 296, s. 2; c. 729; 1957, c. 65, s. 11; cc. 493, 1183, 1190; 1959, c. 559; 1963, c. 356, s. 1; c. 610, ss. 1, 2; c. 702, s. 4; c. 1027, s. 1; 1965, c. 471.)

**Local Modification.**—City of Charlotte: 1955, c. 317.

**Editor's Note.**—The first 1963 amendment added the next-to-last proviso of subsection (e). The second 1963 amendment substituted "thirteen" for "twelve" near the beginning of subsection (c) and deleted at the end of the first sentence of subsection (c) an exception clause relating to certain automobile transports. It also substituted "fifty-five" for "fifty" near the beginning of subsection (e). The third 1963 amendment inserted the first proviso in subsection (e). The fourth 1963 amendment added the last proviso to subsection (e).

The 1965 amendment inserted in the opening paragraph of subsection (j) "permits issued in compliance with G.S. 20-119 for equipment covered under this section may be on a seasonal basis." It also rewrote that portion of subsection (j) following the opening paragraph.

**Height of Vehicle.**—See *Dennis v. Albemarle*, 242 N.C. 263, 87 S.E.2d 561 (1955).

**This section prohibiting the extension of any part of the load of a passenger vehicle beyond the line of the fenders on the left side of such vehicle imposes a duty for the safety of other vehicles on the highway, and is not conclusive on the question of**

contributory negligence of a passenger riding on the running board, with none of his body extending beyond the line of the fenders, who is injured by the negligent operation of another vehicle. *Roberson v. Carolina Taxi Serv.*, 214 N.C. 624, 200 S.E. 363 (1939).

**Evidence Insufficient to Sustain Violation of Subsection (j).**—The defendant's contention that the plaintiff violated subsection (j) of this section, which constitutes negligence per se, was untenable because there was no evidence in the record that the plaintiff's combine exceeded 10 feet in width so as to bring the case within the purview of subsection (j), where the plaintiff's evidence, taken in the light most favorable to him, showed that the combine was 9 feet 11 inches in width while being moved upon the road and the defendant's evidence tended only to show the width of the combine when in actual operation and not when being moved along the highway. *Furr v. Overcash*, 254 N.C. 611, 119 S.E.2d 465 (1961).

**Quoted in** *Lyday v. Southern Ry.*, 253 N.C. 687, 117 S.E.2d 778 (1961).

**Cited in** *Hobbs v. Drew*, 226 N.C. 146, 37 S.E.2d 121 (1946); *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965).

§ 20-117. **Flag or light at end of load.**—Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red flag not less than twelve inches both in length and width, except that between one-half hour after sunset and one-half hour before sunrise there shall be displayed at the end of any such load a red light plainly visible under normal atmospheric conditions at least two hundred feet from the rear of such vehicle. (1937, c. 407, s. 81.)

**Violation of Section Is Negligence.**—The failure of the defendant to display a red light at the end of the lumber, which extended more than four feet beyond the rear of the bed or body of the truck, plainly visible under normal atmospheric conditions at least 200 feet from the rear of the truck, between one-half hour after sunset and one-half hour before sunrise, as required by this section, was negli-

gence. *Weavil v. Myers*, 243 N.C. 386, 90 S.E.2d 733 (1956).

**The former law** was cited in *Williams v. Frederickson Motor Express Lines*, 198 N.C. 193, 151 S.E. 197 (1930).

**Applied in** *Bumgardner v. Allison*, 238 N.C. 621, 78 S.E.2d 752 (1953).

**Cited in** *C. T. Equip. Co. v. Hertz Corp.*, 256 N.C. 277, 123 S.E.2d 802 (1962).

**§ 20-117.1. Equipment required on all semi-trailers operated by contract carriers or common carriers of property.** — (a) **Rear-Vision Mirror.**—Every tractor shall be equipped with at least one rear-vision mirror, firmly attached to the motor vehicle and so located as to reflect to the driver a view of the highway to the rear.

(b) **Fuel Container Not to Project.**—No part of any fuel tank or container or intake pipe shall project beyond the sides of the motor vehicle. (1949, c. 1207, s. 1; 1951, c. 819, s. 1; 1955, c. 1157, ss. 1, 4.)

**§ 20-118. Weight of vehicles and load.**—No vehicle or combination of vehicles shall be moved or operated on any highway or bridge when the gross weight thereof exceeds the limit specified below:

- (1) When the wheel is equipped with high-pressure pneumatic, solid rubber or cushion tire, eight thousand pounds.
- (2) When the wheel is equipped with low-pressure pneumatic tire, nine thousand pounds.
- (3) The gross weight on any one axle of the vehicle when the wheels attached to said axle are equipped with high-pressure solid rubber or cushion tires, sixteen thousand pounds.
- (4) When the wheels attached to said axle are equipped with low-pressure pneumatic tires, eighteen thousand pounds.
- (5) For each violation of subdivisions (3) or (4), or for each violation of the maximum axle weight limits established by the State Highway Commission in connection with light-traffic roads, the owner of the vehicle shall pay to the Department a penalty for each pound of weight of [on] such axle in excess of the said maximum weight in accordance with the following schedule: For the first one thousand (1,000) pounds or any part thereof, two cents (2¢) per pound; for the next one thousand (1,000) pounds or any part thereof, three cents (3¢) per pound; and for each additional pound, five cents (5¢) per pound. Provided, however, the penalty shall not apply if the excess weight on any one axle does not exceed one thousand (1,000) pounds. Said one thousand (1,000) pounds shall constitute a tolerance and no additional tolerance on axle weight shall be granted administratively or otherwise. In all cases of violation of the axle weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted in subdivisions (3) and (4) including the one thousand (1,000) pound tolerance. The penalties herein provided shall constitute sole punishment for violation of this subdivision and violators thereof shall not be subject to criminal action. Provided, that when it is discovered that a vehicle is in violation of subdivisions (3) or (4), or is in violation of the maximum axle weight limits established by the State Highway Commission in connection with light-traffic roads, the owner of the vehicle shall be permitted to shift without penalty the weight from one axle to another to comply with the axle limits set forth in this section in the following instances, provided, that the gross weight of the vehicle is within the legal limit:
  - a. In cases where the single axle load exceeds the statutory limits, but does not exceed 21,000 pounds.
  - b. In cases where the vehicle has tandem axles and the weight exceeds the statutory limits, but does not exceed 40,000 pounds, provided, that for the purpose of this section tandem axles shall be defined as any two axles more than 48 inches apart but less than 96 inches apart.
  - c. In cases where the axle weight does not exceed 15,500 pounds and the limit placed on the road or highway by the State Highway Commission is 13,000 pounds per axle.



- (6) For the purposes of this section an axle load shall be defined as the total load on all wheels whose centers are included within two parallel transverse vertical planes not more than forty-eight inches apart.
  - (7) For the purposes of this section every pneumatic tire designed for use and used when inflated with air to less than one hundred pounds pressure shall be deemed a low-pressure pneumatic tire, and every pneumatic tire inflated to one hundred pounds pressure or more shall be deemed a high-pressure pneumatic tire.
  - (8) The gross weight of any vehicle having two axles shall not exceed thirty thousand pounds, unless used in connection with a combination consisting of four axles or more. For the purpose of determining the maximum weight to be allowed for passenger buses to be operated upon the highways of this State, the Commissioner of Motor Vehicles shall require, prior to the issuance of license, a certificate showing the weight of such bus when fully equipped for the road. No license shall be issued to any passenger bus with two (2) axles having a weight, when fully equipped for operation on the highways, of more than twenty-two thousand, five hundred (22,500) lbs., and no license shall be issued for any passenger bus with three (3) axles having a weight, when fully equipped for operation on the highways, of more than thirty thousand (30,000) lbs., unless the bus for which application for license is made shall have been licensed in the State of North Carolina prior to the 1st day of February, 1949. No special permits shall be issued for any passenger buses exceeding the foregoing specified weights for each group.
  - (9) The gross weight of any vehicle or combination of vehicles having three axles shall not exceed forty-seven thousand five hundred pounds. For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes. For the purposes of this subdivision, brakes shall not be required on the front wheels; provided, however, such vehicle must be capable of complying with the performance requirements of G.S. 20-124 (e).
  - (10) The gross weight of any vehicle or combination of vehicles having four or more axles shall not exceed sixty-four thousand pounds. For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes; provided, the gross weight of any vehicle or combination of vehicles having five or more axles shall not exceed seventy thousand pounds. For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes: Provided a wrecker towing a disabled vehicle or vehicles of an emergency nature, only the weight of the vehicle or combination of vehicles being towed shall be considered. For the purposes of this subdivision, brakes shall not be required on the front wheels; provided, however, such vehicle must be capable of complying with the performance requirements of G.S. 20-124 (e).
  - (11) The gross weight with normal load of passengers of any vehicle propelled by electric power obtained from trolley wires, but not operated upon rails, commonly known as an electric trackless trolley coach, which is operated as a part of the general trackless trolley system of passenger transportation of the city of Greensboro and vicinity, shall not exceed thirty thousand pounds.
  - (12) No vehicle shall be operated on any highway the weight of which, resting on the surface of such highway, exceeds six hundred pounds upon any inch of tire roller or other support.
- Any vehicle or combination of vehicle and load may exceed the gross weight

limitations for the vehicle or vehicle and load hereinbefore set out in this section by not more than five per centum (5%), except that under no circumstances shall the total weight, including tolerance, exceed seventy-three thousand, two hundred eighty pounds.

For each violation of the gross weight limitation for the vehicle or vehicle and load the owner of the vehicle shall pay to the Department a penalty for each pound of weight of such vehicle or vehicle and load in excess of the weight limitations, including the 5%, hereinbefore set out in this section for each vehicle or vehicle and load in accordance with the following schedule: For the first 2,000 pounds or any part thereof, one cent (1¢) per pound; for the next 3,000 pounds or any part thereof, two cents (2¢) per pound; for each pound in excess of 5,000 pounds, five cents (5¢) per pound. (1937, c. 407, s. 82; 1943, c. 213, s. 2; cc. 726, 784; 1945, c. 242, s. 2; c. 569, s. 2; c. 576, s. 7; 1947, c. 1079; 1949, c. 1207, s. 2; 1951, c. 495, s. 2; c. 942, s. 1; c. 1013, ss. 5, 6, 8; 1953, cc. 214, 1092; 1959, c. 872; c. 1264, s. 6; 1963, c. 159; c. 610, ss. 3-5; c. 702, s. 5; 1965, cc. 483, 1044.)

**Editor's Note.**—The first 1963 amendment substituted “forty-seven thousand five hundred” “for forty-four thousand” in subdivision (9).

The second 1963 amendment substituted “sixty-four thousand” for “sixty-two thousand” near the beginning of subdivision (10) and added the first proviso and the third sentence in subdivision (10). It also added the exception clause at the end of the next-to-last paragraph.

The third 1963 amendment added the second proviso to subdivision (10).

The first 1965 amendment added, at the end of subdivision (5), the provisions permitting the owner of the vehicle to shift without penalty the weight from one axle to another to comply with the axle limits.

The second 1965 amendment added the last sentence in subdivisions (9) and (10).

**§ 20-118.1. Peace officer may weigh vehicle and require removal of excess load; refusal to permit weighing.**—Any peace officer having reason to believe that the weight of a vehicle and load is unlawful is authorized to weigh the same either by means of portable or stationary scales, and may require that such vehicle be driven to the nearest scales in the event such scales are within two miles. The officer may then require the driver to unload immediately such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum therefor specified in this article. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator. Any person who refuses to permit a vehicle being operated by him to be weighed as in this section provided or who refuses to drive said vehicle upon the scales provided for weighing for the purpose of being weighed, shall be guilty of a misdemeanor. (1927, c. 148, s. 37; 1949, c. 1207, s. 3; 1951, c. 1013, s. 4.)

**§ 20-118.2. Authority to fix higher weight limitations at reduced speeds for certain vehicles.**—The State Highway Commission is hereby authorized and empowered to fix higher weight limitations at reduced speeds for vehicles used in transporting property when the point of origin or destination of the motor vehicles is located upon any light traffic highway, county road, farm to market road, or any other roads of the secondary system only and/or to the extent only that the motor vehicle is necessarily using said highway in transporting the property from the bona fide point of origin of the property being transported or to the bona fide point of destination of said property and such weights may be different from the weight of those vehicles otherwise using such roads. (1951, c. 1013, s. 7A; 1957, c. 65, s. 11.)

**Editor's Note.**—Section 8 of c. 1013, Session Laws 1951, from which this section was codified, provided “nothing in this act shall conflict with or repeal G.S. 20-119.”

**§ 20-119. Special permits for vehicles of excessive size or weight.**—The State Highway Commission may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing

authorizing the applicant to operate or move a vehicle of a size or weight exceeding a maximum specified in this article upon any highway under the jurisdiction and for the maintenance of which the body granting the permit is responsible. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer; and it shall be a misdemeanor for any person to violate any of the terms or conditions of such special permit: Provided, the authorities in any incorporated city or town may grant permits in writing and for good cause shown, authorizing the applicant to move a vehicle over the streets of such city or town, the size or width exceeding the maximum expressed in this article. (1937, c. 407, s. 83; 1957, c. 65, s. 11; 1959, c. 1129.)

**This section was enacted for the protection of the traveling public.** *Lyday v. Southern Ry.*, 253 N.C. 687, 117 S.E.2d 778 (1961).

**Violation as Contributory Negligence.**— Whether violation of this section by the

plaintiff constitutes contributory negligence depends on whether or not such violation is a proximate cause, or one of the proximate causes, of the damages suffered by the plaintiff. *Lyday v. Southern Ry.*, 253 N.C. 687, 117 S.E.2d 778 (1961).

**§ 20-120. Operation of flat trucks on State highways regulated; trucks hauling leaf tobacco in barrels or hogsheads.**— It shall be unlawful for any person, firm or corporation to operate, or have operated on any public highway in the State any open, flat truck loaded with logs, cotton bales, boxes or other load piled on said truck, without having the said load securely fastened on said truck.

It shall be unlawful for any firm, person or corporation to operate or permit to be operated on any highway of this State a truck or trucks on which leaf tobacco in barrels or hogsheads is carried unless each section or tier of such barrels or hogsheads are reasonably securely fastened to such truck or trucks by metal chains or wire cables, or manila or hemp ropes of not less than five-eighths inch in diameter, to hold said barrels or hogshead in place under any ordinary traffic or road condition: Provided that the provisions of this paragraph shall not apply to any truck or trucks on which the hogsheads or barrels of tobacco are arranged in a single layer, tier, or plane, it being the intent of this paragraph to require the use of metal chains or wire cables only when barrels or hogsheads of tobacco are stacked or piled one upon the other on a truck or trucks. Nothing in this paragraph shall apply to trucks engaged in transporting hogsheads or barrels of tobacco between factories and storage houses of the same company unless such hogsheads or barrels are placed upon the truck in tiers. In the event the hogsheads or barrels of tobacco are placed upon the truck in tiers same shall be securely fastened to the said truck as hereinbefore provided in this paragraph.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1939, c. 114; 1947, c. 1094; 1953, c. 240.)

**§ 20-121. When authorities may restrict right to use highways.**— The State Highway Commission or local authorities may prohibit the operation of vehicles upon or impose restrictions as to the weight thereof, for a total period not to exceed ninety days in any one calendar year, when operated upon any highway under the jurisdiction of and for the maintenance of which the body adopting the ordinance is responsible, whenever any said highway by reason of deterioration, rain, snow or other climatic conditions will be damaged unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced. The local authority enacting any such ordinance shall erect, or cause to be erected and maintained, signs designating the provisions of the ordinance at each end of that portion of any highway to which the ordinance is applicable, and the ordinance



shall not be effective until or unless such signs are erected and maintained. (1937, c. 407, s. 84; 1957, c. 65, s. 11.)

**Cross Reference.**—As to powers of municipal corporations as to streets, see § 160-200, subdivisions (11), (31).

§ 20-122. **Restrictions as to tire equipment.**—(a) Every solid rubber tire on a vehicle moved on any highway shall have rubber on its entire traction surface at least one and a half inches thick above the edge of the flange of the entire periphery.

(b) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway and except, also, that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to slide or skid. It shall be permissible to use upon any vehicle for increased safety, regular and snow tires with studs which project beyond the tread of the traction surface of the tire not more than 1/16th of an inch when compressed.

(c) The State Highway Commission or local authorities in their respective jurisdictions may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugation upon the periphery of such movable tracks or farm tractors of other farm machinery.

(d) It shall not be unlawful to drive farm tractors on dirt roads from farm to farm: Provided, in doing so they do not damage said dirt roads or interfere with traffic. (1937, c. 407, s. 85; 1939, c. 266; 1957, c. 65, s. 11; 1965, c. 435.)

**Editor's Note.**—The 1965 amendment added the second sentence of subsection (b). Cited in State Highway Comm'n v. Raleigh Farmers Mkt., Inc., 263 N.C. 622, 139 S.E.2d 904 (1965).

§ 20-123. **Trailers and towed vehicles.**—(a) No motor vehicle shall be driven upon any highway drawing or having attached thereto more than one trailer or semi-trailer: Provided that this provision shall not apply to trailers not exceeding three (3) in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of fifty (50) feet inclusive of front and rear bumpers: Provided that this provision shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a drive-away service when no more than two saddle mounts are used and provided further that equipment used in said combination is approved by the safety regulations of the Interstate Commerce Commission and the safety regulations of the North Carolina Department of Motor Vehicles and the North Carolina State Highway Commission. Nothing herein shall prohibit the towing of farm trailers and equipment in single tandem during the period from one half hour before sunrise and one half hour after sunset, but such combination of vehicles shall not exceed a total length of 40 feet and provided there is displayed on the rear of the last vehicle being towed, in such position as to be clearly visible at all times, a red flag not less than 12 inches both in length and width. The towing of farm trailers and equipment as herein permitted shall not be applicable to interstate or federal numbered highways.

(b) No trailer or semi-trailer shall be operated over the highways of the State unless such trailer or semi-trailer be firmly attached to the rear of the motor vehicle drawing same, and unless so equipped that it will not snake, but will travel in the path of the wheels of the vehicle drawing such trailer or semi-trailer, which equipment shall at all times be kept in good condition. (1937, c. 407, s. 86; 1955, c. 296, s. 3; 1963, c. 356, s. 2; c. 1027, s. 2; 1965, c. 966.)

**Editor's Note.**—The first 1963 amendment added the first proviso to subsection (a). The second 1963 amendment added the second proviso to subsection (a).

The 1965 amendment added the last two sentences in subsection (a).

**§ 20-123.1. Steering mechanism.**—The steering mechanism of every self-propelled motor vehicle operated on the highway shall be maintained in good working order, sufficient to enable the operator to control the vehicle's movements and to maneuver it safely. (1957, c. 1038, s. 3.)

**§ 20-124. Brakes.**—(a) Every motor vehicle when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop such vehicle or vehicles, and such brakes shall be maintained in good working order and shall conform to regulations provided in this section.

(b) No person having control or charge of a motor vehicle shall allow such vehicle to stand on any highway unattended without first effectively setting the parking brake thereon, stopping the motor and turning the front wheels into the curb or side of the highway.

(c) Every motor vehicle other than a motorcycle or motor-driven cycle when operated on a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

(d) Every motorcycle and every motor-driven cycle when operated upon a highway shall be equipped with at least one brake which may be operated by hand or foot.

(e) Motor trucks and tractor-trucks with semitrailers attached shall be capable of stopping on a dry, hard, approximately level highway free from loose material at a speed of twenty miles per hour within the following distances: Thirty feet with both hand and service brake applied simultaneously and fifty feet when either is applied separately, except that vehicles maintained and operated permanently for the transportation of property and which were registered in this or any other state or district prior to August, nineteen hundred and twenty-nine, shall be capable of stopping on a dry, hard, approximately level highway free from loose material at a speed of twenty miles per hour within a distance of fifty feet with both hand and service brake applied simultaneously, and within a distance of seventy-five feet when either applied separately.

(ee) Every motor truck and tractor-truck with semitrailer attached, shall be equipped with brakes acting on all wheels, except trucks and truck-tractors having three or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck-tractors must be capable of complying with the performance requirements of G.S. 20-124 (e).

(f) Every semitrailer, or trailer, or separate vehicle, attached by a drawbar or coupling to a towing vehicle, and having a gross weight of two tons, and all house trailers of one thousand pounds gross weight or more, shall be equipped with brakes controlled or operated by the driver of the towing vehicle, which shall conform to the specifications set forth in subsection (d) of this section and shall be of a type approved by the Commissioner.

(g) The provisions of this section shall not apply to any trailer or semitrailer when used by a farmer, his tenant, agent, or employee under such circumstances that such trailer or semitrailer is exempt from registration by the provisions of § 20-51.

(h) From and after July 1, 1955, no person shall sell or offer for sale for use

in motor vehicle brake systems in this State any hydraulic brake fluid of a type and brand other than those approved by the Commissioner of Motor Vehicles. Violation of the provisions of this subsection shall constitute a misdemeanor. (1937, c. 407, s. 87; 1953, c. 1316, s. 2; 1955, c. 1275; 1959, c. 990; 1965, c. 1031.)

**Editor's Note.**—The 1965 amendment added subsection (ee).

**Legislative Purpose.**—This section was enacted to promote safe operation of motor vehicles on the highways. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

**Section Is Mandatory.**—The language of this section is mandatory. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

**But Section Must Be Given Reasonable Interpretation.**—Although the language of this section is mandatory, the statute must be given a reasonable interpretation to promote its intended purpose. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d (1963).

**The legislature did not intend to make operators of motor vehicles insurers** of the adequacy of their brakes. The operator must act with care and diligence to see that his brakes meet the standard prescribed by this section; but if because of some latent defect, unknown to the operator and not reasonably discoverable upon proper inspection, he is not able to control the movement of his car, he is not negligent, and for that reason not liable for injuries directly resulting from such loss of control; such injuries result from an unavoidable accident. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

**Violation Negligence Per Se.**—Violation of this section is negligence per se, but such violation must be proximate cause of injury to become actionable. *Tysinger v. Coble Dairy Prods.*, 225 N.C. 717, 36 S.E.2d 246 (1945); *Arnett v. Yeago*, 247 N.C. 356, 100 S.E.2d 855 (1957); *Watts v. Watts*, 252 N.C. 352, 113 S.E.2d 720 (1960); *Bundy v. Belue*, 253 N.C. 31, 116 S.E.2d 200 (1960).

One who fails to comply with the provisions of this section is negligent. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

If the negligence resulting from failure to comply with the provisions of this section proximately causes injury, liability results. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

**Runaway Automobile—Inference.**—The fact that an automobile ran down the street for a considerable distance immediately after it was parked, permits the inference that plaintiff's intestate did not turn its

front wheels to the curb of the street, as required by this section and § 20-163. *Watts v. Watts*, 252 N.C. 352, 113 S.E.2d 720 (1960).

**Delivery of Automobile with Defective Brakes.**—Whether defendant breached his duty to the intestates of plaintiff by delivering to them an automobile when he knew, or by the exercise of ordinary care should have known, the brakes were defective and operation was dangerous held a question for the jury. *Austin v. Austin*, 252 N.C. 283, 113 S.E.2d 553 (1960).

**Question of Proximate Cause Is for Jury.**—Whether a violation of the provisions of this section is one proximate cause of an injury is for the jury to determine. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

**Harmless Instruction.**—A charge as to proper brakes on motor vehicles, in compliance with this section, where the evidence shows no mention of brakes, is a harmless inadvertence. *Hopkins v. Colonial Stores*, 224 N.C. 137, 29 S.E.2d 455 (1944).

**Evidence Sufficient to Negative Prima Facie Case of Negligence.**—Defendants' evidence to the effect that brakes on the corporate defendant's vehicle had been overhauled and relined and had worked perfectly until some two days thereafter when the brakes suddenly failed, causing the accident in suit, and that after the collision it was ascertained that the flange on one of the wheels was broken, permitting the brake fluid to escape, was held to require the court to instruct the jury that if they accepted defendants' evidence it was sufficient to negative the prima facie case of negligence made out by plaintiff's evidence of the failure of the brakes on defendant's vehicle. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

**Applied in** *Burlington Indus., Inc. v. State Highway Comm'n*, 262 N.C. 620, 138 S.E.2d 281 (1964).

**Quoted in** *Newbern v. Leary*, 215 N.C. 134, 1 S.E.2d 384 (1939).

**Cited in** *Crotts v. Overnite Transp. Co.*, 246 N.C. 420, 98 S.E.2d 502 (1957); *Jones v. C. B. Atkins Co.*, 259 N.C. 655, 131 S.E.2d 371 (1963); *Warren v. Jeffries*, 263 N.C. 531, 139 S.E.2d 718 (1965); *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965).



§ 20-125. **Horns and warning devices.**—(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, and it shall be unlawful, except as otherwise provided in this section, for any vehicle to be equipped with or for any person to use upon a vehicle any siren, compression or spark plug whistle or for any person at any time to use a horn otherwise than as a reasonable warning or to make any unnecessary or unreasonable loud or harsh sound by means of a horn or other warning device. All such horns and warning devices shall be maintained in good working order and shall conform to regulation not inconsistent with this section to be promulgated by the Commissioner.

(b) Every vehicle owned and operated by a police department or by the State Highway Patrol or by the Wildlife Resources Commission and used exclusively for law enforcement purposes, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, and every ambulance used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and one assistant chief of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by inspectors in the employ of the North Carolina Utilities Commission shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil defense agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization.

(c) Notwithstanding any other provisions of law, the following vehicles may be equipped with a special blue warning light of a type approved by the Commissioner of Motor Vehicles:

(1) All publicly owned vehicles used primarily for law enforcement purposes;

(2) All other vehicles used primarily by law enforcement officers in the performance of their official duties.

It shall be unlawful for such blue lights to be installed on a vehicle other than

those enumerated in (c) above, or for such blue lights to be activated or operated by any person except a law enforcement officer who is actively engaged in performing lawful duties. (1937, c. 407, s. 88; 1951, cc. 392, 1161; 1955, c. 1224; 1959, c. 166, s. 1; c. 494; c. 1170, s. 1; c. 1209; 1965, c. 257.)

**Local Modification.**—Brunswick: 1959, c. 211; Edgecombe: 1955, c. 1024.

**Editor's Note.**—The 1965 amendment added subsection (c).

**Distinction between Vehicles Making Normal Use of Highway and Those Engaged in Emergency Uses.**—The legislature, in prescribing practical warning devices for use on motor vehicles, drew a distinction between vehicles making normal use of the highway and those engaged

in emergency uses. For normal use, a horn audible for 200 feet under normal conditions was deemed adequate, under subsection (a) of this section; but something different and manifestly with a more authoritative voice and greater volume was expected of vehicles on emergency errands under subsection (b). *McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, Inc.*, 248 N.C. 146, 102 S.E.2d 816 (1958).

**§ 20-125.1. Directional signals.**—(a) It shall be unlawful for the owner of any motor vehicle of a changed model or series designation indicating that it was manufactured or assembled after July 1, 1953, to register such vehicle or cause it to be registered in this State, or to obtain, or cause to be obtained in this State registration plates therefor, unless such vehicle is equipped with a mechanical or electrical signal device by which the operator of the vehicle may indicate to the operator of another vehicle, approaching from either the front or rear and within a distance of 200 feet, his intention to turn from a direct line. Such signal device must be of a type approved by the Commissioner of Motor Vehicles.

(b) It shall be unlawful for any dealer to sell or deliver in this State any motor vehicle of a changed model or series designation indicating that it was manufactured or assembled after July 1, 1953, if he knows or has reasonable cause to believe that the purchaser of such vehicle intends to register it or cause it to be registered in this State or to resell it to any other person for registration in and use upon the highways of this State, unless such motor vehicle is equipped with a mechanical or electrical signal device by which the operator of the vehicle may indicate to the operator of another vehicle, approaching from either of the front or rear or within a distance of 200 feet, his intention to turn from a direct line. Such signal device must be of a type approved by the Commissioner of Motor Vehicles: Provided that in the case of any motor vehicle manufactured or assembled after July 1, 1953 the signal device with which such motor vehicle is equipped shall be presumed prima facie to have been approved by the Commissioner of Motor Vehicles. Irrespective of the date of manufacture of any motor vehicle a certificate from the Commissioner of Motor Vehicles to the effect that a particular type of signal device has been approved by his Department shall be admissible in evidence in all the courts of this State.

(c) Trailers satisfying the following conditions are not required to be equipped with a directional signal device:

- (1) The trailer and load does not obscure the directional signals of the towing vehicle from the view of a driver approaching from the rear and within a distance of two hundred (200) feet;
- (2) The gross weight of the trailer and load does not exceed three thousand (3,000) pounds.

Nothing in this section shall apply to motorcycles. (1953, c. 481; 1957, c. 488, s. 1; 1963, c. 524.)

**Editor's Note.**—The 1963 amendment inserted subsection (c) before the last paragraph of the section.

**§ 20-126. Mirrors.**—(a) No person shall drive a motor vehicle on a highway which motor vehicle is so constructed or loaded as to prevent the driver

from obtaining a view of the highway to the rear by looking backward from the driver's position, unless such vehicle is equipped with a mirror of a type to be approved by the Commissioner so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle.

(b) It shall be unlawful for any person to operate upon the highways of this State any vehicle manufactured, assembled or first sold on or after January 1, 1966 and registered in this State unless such vehicle is equipped with at least one outside mirror mounted on the driver's side of the vehicle. Mirrors herein required shall be of a type approved by the Commissioner. (1937, c. 407, s. 89; 1965, c. 368.)

**Editor's Note.** — The 1965 amendment, effective Jan. 1, 1966, designated the former provisions of the section as subsection (a) and added subsection (b).

**Cited in** *Bechtler v. Bracken*, 218 N.C. 515, 11 S.E.2d 721 (1940).

**§ 20-127. Windshields must be unobstructed.**—(a) It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster or other nontransparent material upon the front windshield, side wings, side or rear window of such motor vehicle other than a certificate or other paper required to be so displayed by law, or approved by the Commissioner of Motor Vehicles.

(b) No motor vehicle which is equipped with a permanent windshield shall be operated upon the highways unless said windshield is equipped with a device for cleaning snow, rain, moisture, or other matters from the windshield directly in front of the operator, which device shall be in good working order and so constructed as to be controlled or operated by the operator of the vehicle. The device required by this subsection shall be of a type approved by the Commissioner.

(c) The windshield, rear and side glasses of a motor vehicle must be free from discoloration which impair the driver's vision or create a hazard. (1937, c. 407, s. 90; 1953, c. 1254; 1955, c. 1157, s. 2; 1959, c. 1264, s. 7.)

**§ 20-128. Prevention of noise, smoke, etc.; muffler cut-outs regulated.**—(a) No person shall drive a motor vehicle on a highway unless such motor vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, annoying smoke and smoke screens.

(b) It shall be unlawful to use a "muffler cut-out" on any motor vehicle upon a highway. (1937, c. 407, s. 91.)

**Warrant held sufficient to charge violation of this section.** *State v. Daughtry*, 236 N.C. 316, 72 S.E.2d 658 (1952).

**Cited in** *State v. Woolard*, 260 N.C. 133, 132 S.E.2d 364 (1963).

**§ 20-129. Required lighting equipment of vehicles.**—(a) When Vehicles Must Be Equipped.—Every vehicle upon a highway within this State during the period from a half hour after sunset to a half hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible any person on the highway at a distance of two hundred feet ahead, shall be equipped with lighted front and rear lamps as in this section respectively required for different classes of vehicles, and subject to exemption with reference to lights on parked vehicles as declared in § 20-134.

(b) Head Lamps on Motor Vehicles.—Every self-propelled motor vehicle other than motorcycles, road machinery, and farm tractors shall be equipped with at least two head lamps, all in good operating condition with at least one on each side of the front of the motor vehicle. Head lamps shall comply with the requirements and limitations set forth in G.S. 20-131 or G.S. 20-132.

(c) Head Lamps on Motorcycles.—Every motorcycle shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations set forth in §§ 20-131 or 20-132.



(d) **Rear Lamps.**—Every motor vehicle and every trailer or semi-trailer which is being drawn at the end of a train of vehicles shall carry at the rear a lamp of a type which has been approved by the Commissioner and which exhibits a red light plainly visible under normal atmospheric conditions from a distance of five hundred feet to the rear of such vehicle, and so constructed and placed that the number plate carried on the rear of such vehicle shall under like conditions be so illuminated by a white light as to be read from a distance of fifty feet to the rear of such vehicle, and every trailer or semi-trailer shall carry at the rear, in addition to a rear lamp as above specified, a red reflector of a type which has been approved by the Commissioner and which is so designed, located as to a height and maintained as to be visible for at least five hundred feet when opposed by a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway. Such reflector shall be placed at the extreme end of the load.

Notwithstanding the provision of the first paragraph of this subsection, it shall not be necessary for a trailer, licensed for not more than 2500 pounds, to carry or be equipped with a rear lamp, provided such vehicle is equipped with and carries at the rear two red reflectors, each not less than four inches in diameter, and to be of a type approved by the Commissioner, and which are so designed, located as to height and maintained as for each reflector to be visible for at least five hundred feet when approached by a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway, such reflectors to be placed at the extreme end of the load.

(e) **Lamps on Bicycles.**—Every bicycle shall be equipped with a lighted lamp on the front thereof, visible under normal atmospheric conditions from a distance of at least three hundred feet in front of such bicycle, and shall also be equipped with a reflex mirror or lamp on the rear, exhibiting a red light visible under like conditions from a distance of at least two hundred feet to the rear of such bicycle, when used at night.

(f) **Lights on Other Vehicles.**—All vehicles not heretofore in this section required to be equipped with specified lighted lamps shall carry on the left side one or more lighted lamps or lanterns projecting a white light, visible under normal atmospheric conditions from a distance of not less than five hundred feet to the front of such vehicle and visible under like conditions from a distance of not less than five hundred feet to the rear of such vehicle, or in lieu of said lights shall be equipped with reflectors of a type which is approved by the Commissioner. Farm tractors operated on a highway at night must be equipped with at least one white lamp visible at a distance of five hundred feet from the front of the tractor and with at least one red lamp visible at a distance of five hundred feet to the rear of the tractor. Two red reflectors each having a diameter of at least four inches may be used on the rear of the tractor in lieu of the red lamp.

(g) No person shall sell or operate on the highways of the State any motor vehicle, motorcycle or motor-driven cycle, manufactured after December 31, 1955, unless it shall be equipped with a stop lamp on the rear of the vehicle. The stop lamp shall display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake. The stop lamp may be incorporated into a unit with one or more other rear lamps. ( 1937, c. 407, s. 92; 1939, c. 275; 1947, c. 526; 1955, c. 1157, ss. 3-5, 8; 1957, c. 1038, s. 1.)

**Cross Reference.**—See note to § 20-131.

Thomas v. Thurston Motor Lines, 230 N.C. 122, 52 S.E.2d 377 (1949).

**Purpose of Section.**—This section was enacted to minimize the hazards incident to the movement of motor vehicles upon the public roads during the nighttime.

This section was enacted for the protection of persons and property and in the interest of public safety, and the preserva-

tion of human life. *State v. Norris*, 242 N.C. 47, 86 S.E.2d 916 (1955).

This section was enacted in the interest of public safety. *Scarborough v. Ingram*, 256 N.C. 87, 22 S.E.2d 798 (1961); *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

**Section 20-161 does not conflict with nor reduce the obligation** imposed on the operator of a motor vehicle stopped or parked on the highway at night to light his vehicle as required by this section and § 20-134. *Melton v. Crotts*, 257 N.C. 121, 125 S.E.2d 396 (1962).

**What Constitutes Violation.**—Driving a motor vehicle without lights during the period from a half hour after sunset to a half hour before sunrise violates this section and is punishable as prescribed by § 20-176 (b). *State v. Eason*, 242 N.C. 59, 86 S.E.2d 774 (1955).

Operating a motor vehicle on a public highway at night without lights is a violation of this section. *Williamson v. Varner*, 252 N.C. 446, 114 S.E.2d 92 (1960).

**Violation as Negligence Per Se.**—The operation of a tractor-trailer on the highways at night without the rear and clearance lights burning as required by this section is negligence per se. *Thomas v. Thurston Motor Lines*, 230 N.C. 122, 52 S.E.2d 377 (1949).

The violation of this section is negligence per se. *Williamson v. Varner*, 252 N.C. 446, 114 S.E.2d 92 (1960); *Correll v. Gaskins*, 263 N.C. 212, 139 S.E.2d 202 (1964).

The violation of this section constitutes negligence as a matter of law. *Scarborough v. Ingram*, 256 N.C. 87, 22 S.E.2d 798 (1961); *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

One who operates a vehicle at night without lights, or with improper lights, is negligent. *Reeves v. Campbell*, 264 N.C. 224, 141 S.E.2d 296 (1965).

Riding a bicycle on the highway at night without a lamp of any kind on the front thereof, is a violation of this section and is negligence per se. *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

**And as Misdemeanor under § 20-176.**—The violation of this section is a misdemeanor under § 20-176. *Williamson v. Varner*, 252 N.C. 446, 114 S.E.2d 92 (1960).

**Lights on Motor Vehicles Serve Two Purposes.**—The lights required by this section serve two purposes: (1) To enable the operator of the automobile to see what is ahead of him; (2) to inform others of the approach of the automobile. *Reeves v. Campbell*, 264 N.C. 224, 141 S.E.2d 296 (1965).

**Purpose of Front Lamp on Bicycle.**—Subsection (e) of this section, respecting a front lamp on a bicycle, is designed for the benefit of those approaching a bicycle from the front and for the protection of the bicyclist from such. *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

**And of Red Reflector.**—The red reflector required under subsection (e) is designed to protect the bicyclist from vehicles approaching from the rear and to give notice to such vehicles of the presence of the bicycle ahead. *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

**Intensity of Light.**—Subsection (e) in no way requires a light of such intensity as to render objects visible along the highway in front of the bicycle. *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

**Negligence in not having a light on the rear of a truck** will not preclude recovery against one who drove his car into the truck, unless it contributed to the injury. *Hughes v. Luther*, 189 N.C. 841, 128 S.E. 145 (1925).

**Absence of Rear Lights on Smoke Covered Road.**—Where plaintiff's evidence tended to show that he was driving at night along a highway covered with smoke from fires along its side and that he collided with the rear of an oil truck which was headed in the same direction and which had been stopped on the highway without rear lights in violation of this section it was held that conceding negligence on the part of defendant, plaintiff's evidence discloses contributory negligence barring recovery as a matter of law, either in driving at a speed in excess of that at which he could stop within the distance to which his lights would disclose the existence of obstructions, or, if he could have seen the oil truck in time to have avoided a collision, in failing to do so. *Sibbitt v. R. & W. Transit Co.*, 220 N.C. 702, 18 S.E.2d 203 (1942).

**Parking on highway without lights 40 minutes before sunrise** is unlawful. *Smith v. Nunn*, 257 N.C. 108, 125 S.E.2d 351 (1962).

**Bicycle Being Carried by Pedestrian.**—Plaintiff's evidence was to the effect that at nighttime he was carrying a child's bicycle, too small for him to ride, across a street intersection to a repair shop, and that he was hit by a vehicle entering the intersection against the stop light at a high rate of speed. The court held that the refusal to give defendant's requested instruction that the failure to have a light on the bicycle was a violation of subsection (f)

[now subsection (e)] of this section was not error, since under the circumstances plaintiff was a pedestrian rather than a cyclist. *Holmes v. Blue Bird Cab*, 227 N.C. 581, 43 S.E.2d 71 (1947), decided prior to the 1955 amendment.

**Disabled Vehicle.** — A tractor-trailer standing on the paved portion of a highway at nighttime is required to have the rear and clearance lights burning as provided by this section, regardless of whether or not the vehicle is disabled within the meaning of § 20-161 (c). *Thomas v. Thurston Motor Lines*, 230 N.C. 122, 52 S.E.2d 377 (1949).

It is negligence to permit a disabled bus to stand on a highway at night without lights, blocking a lane of traffic, without giving warning to approaching vehicles. *Dezern v. Asheboro City Bd. of Educ.*, 260 N.C. 535, 133 S.E.2d 204 (1963).

**Right of Motorist to Assume That Other Vehicle Will Display Lights.**—A motorist has the right to act upon the assumption, until he has notice to the contrary, that no other motorist will permit a motor vehicle either to move or to stand on the highway without displaying thereon the lights required by this section and § 20-134. *Chaffin v. Brame*, 233 N.C. 377, 64 S.E.2d 276 (1951). See *Towe v. Stokes*, 117 F. Supp. 880 (M.D.N.C. 1954); *United States v. First-Citizens Bank & Trust Co.*, 208 F.2d 280, (4th Cir.) affirming *Rosenblatt v. United States*, 112 F. Supp. 114 (E.D.N.C. 1953).

A plaintiff until he saw, or by the exercise of due care should have seen, the approach of defendant's car, was entitled to assume and to act upon the assumption that no motorist would be traveling without lights in violation of this section. *White v. Lacey*, 245 N.C. 364, 96 S.E.2d 1 (1957).

**Whether Obstruction Should Have Been Seen Is Jury Question.**—Generally speaking, where the statutes, as this section, or the decisions of the courts, require red lights as a warning of danger on any object in the highway and such lights are not present, it is a question for the jury to determine whether the driver at night should have seen the obstruction, notwithstanding the absence of red lights. *Morris v. Sells-Floto Circus*, 65 F.2d 782 (4th Cir. 1933).

**Instructions.** — The court correctly instructed the jury in specific detail that the defendant would be chargeable with negligence if he drove a school bus having a width in excess of eighty inches on the highway during the nighttime without dis-

playing burning clearance lights thereon as required by this section. This instruction was correct, even though the duty to keep the lighting system on the vehicle in good working order may have rested on the defendant's employer and not on the defendant. The latter was not empowered to set a positive statute at naught merely because his employer may have furnished him a vehicle with a defective lighting system. *Hansley v. Tilton*, 234 N.C. 3, 65 S.E.2d 300 (1951).

Defendant was held entitled to an instruction, even in the absence of request therefor, in substance, as follows: If the jury find by the greater weight of the evidence that plaintiff stopped his car and permitted it to stand, without lights, on the paved portion of the road in defendant's right lane of travel, such conduct on the part of the plaintiff would constitute negligence as a matter of law; and if the jury find by the greater weight of the evidence that such negligence was a proximate cause of the collision and plaintiff's injuries, the jury is instructed to answer the contributory negligence issue, "Yes." *Correll v. Gaskins*, 263 N.C. 212, 139 S.E.2d 202 (1964).

Where plaintiff's evidence fails to show that his bicycle was equipped with a lighted lamp on the front thereof, but does show that he had a reflecting mirror on its rear, and that plaintiff's bicycle was hit from the rear by a car operated by defendant, and there is no evidence in the record that if the bicycle had been equipped with a front lamp, the lamp would have been visible to a person approaching in an automobile from the rear of the bicycle, the Supreme Court held the only legitimate inference is that the absence of a lighted lamp on the front of the bicycle was not a proximate cause or a contributing proximate cause of the collision, and the court may properly charge the jury to this effect. *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

**Evidence Sufficient for Jury.**—Evidence tending to show that the headlights on defendant's car were defective and that he was driving at a speed of 60 to 65 miles an hour and that, in a sudden effort to avoid colliding with another automobile which had been backed into the highway and which was apparently not in motion at the time, defendant drove off the road, causing the car to overturn, inflicting serious injury to plaintiff, a guest in the car, requires the submission of the case to the jury. *Stewart v. Stewart*, 221 N.C. 147, 19 S.E.2d 242 (1942).



Evidence that the car in which plaintiff was riding as a guest struck defendant's trailer which was standing across the highway in the car's lane of traffic, and that the trailer did not have burning the lights required by this section, is sufficient to overrule defendant's motion to nonsuit and motion for a directed verdict in its favor on the issue of negligence, since the question of proximate cause under the evidence is for the jury. *Thomas v. Thurston Motor Lines*, 230 N.C. 122, 52 S.E.2d 377 (1949).

**Evidence Showing Violation of Section.**—See *Powell v. Lloyd*, 234 N.C. 481, 67 S.E.2d 664 (1951).

**Applied in** *McKinnon v. Howard Motor Lines*, 228 N.C. 132, 44 S.E.2d 735 (1947); *Pascal v. Burke Transit Co.*, 229 N.C. 435, 50 S.E.2d 534 (1948); *Gantt v. Hobson*,

240 N.C. 426, 82 S.E.2d 384 (1954) (as to subsection (d)); *Punch v. Landis*, 258 N.C. 114, 128 S.E.2d 224 (1962).

**Quoted in part in** *Morris v. Jenrette Transp. Co.*, 235 N.C. 568, 70 S.E.2d 845 (1952).

**Cited in** *Newbern v. Leary*, 215 N.C. 134, 1 S.E.2d 384 (1939); *Pike v. Seymour*, 222 N.C. 42, 21 S.E.2d 884 (1942); *Morgan v. Cook*, 236 N.C. 477, 73 S.E.2d 296 (1952); *Hollifield v. Everhart*, 237 N.C. 313, 74 S.E.2d 706 (1953); *Smith v. Kingston*, 249 N.C. 160, 105 S.E.2d 648 (1959); *Meece v. Dickson*, 252 N.C. 300, 113 S.E.2d 578 (1960); *Smith v. Goldsboro Iron & Metal Co.*, 257 N.C. 143, 125 S.E.2d 377 (1962); *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965).

**§ 20-129.1. Additional lighting equipment required on certain vehicles.**—In addition to other equipment required in this chapter, the following vehicles shall be equipped as follows:

- (1) On every bus or truck, whatever its size, there shall be the following:
  - On the rear, two reflectors, one at each side, and one stop light.
- (2) On every bus or truck 80 inches or more in over-all width, in addition to the requirements in subdivision (1):
  - On the front, two clearance lamps, one at each side.
  - On the rear, two clearance lamps, one at each side.
  - On each side, two side marker lamps, one at or near the front and one at or near the rear.
  - On each side, two reflectors, one at or near the front and one at or near the rear.
- (3) On every truck tractor:
  - On the front, two clearance lamps, one at each side.
  - On the rear, one stop light.
- (4) On every trailer or semi-trailer having a gross weight in excess of 3,000 pounds:
  - On the front, two clearance lamps, one at each side.
  - On each side, two side marker lamps, one at or near the front and one at or near the rear.
  - On each side, two reflectors, one at or near the front and one at or near the rear.
  - On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stop light.
- (5) On every pole trailer in excess of 3,000 pounds gross weight:
  - On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.
  - On the rear of the pole trailer or load, two reflectors, one at each side.
- (6) On every trailer, semi-trailer or pole trailer weighing 3,000 pounds gross or less:
  - On the rear, two reflectors, one on each side. If any trailer or semi-trailer is so loaded or is of such dimensions as to obscure the stop light on the towing vehicle, then such vehicle shall also be equipped with one stop light.
- (7) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

- (8) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.
- (9) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a backup lamp shall be white or amber. (1955, c. 1157, s. 4.)

**This section was enacted in the interest of public safety.** *Scarborough v. Ingram*, 256 N.C. 87, 122 S.E.2d 798 (1961); *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

256 N.C. 87, 122 S.E.2d 798 (1961); *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

**Applied in** *Smith v. Goldsboro Iron & Metal Co.*, 257 N.C. 143, 125 S.E.2d 377 (1962).

**Its violation constitutes negligence** as a matter of law. *Scarborough v. Ingram*,

**§ 20-130. Additional permissible light on vehicle.**—(a) Spot Lamps.—Any motor vehicle may be equipped with not to exceed two spot lamps, except that a motorcycle shall not be equipped with more than one spot lamp, and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the beam will be directed to the left of the center of the highway nor more than one hundred feet ahead of the vehicle. No spot lamps shall be used on the rear of any vehicle.

(b) Auxiliary Driving Lamps.—Any motor vehicle may be equipped with not to exceed two auxiliary driving lamps mounted on the front, and every such auxiliary driving lamp or lamps shall meet the requirements and limitations set forth in § 20-131, subsection (c).

(c) Restrictions on Lamps.—Any device, other than head lamps, spot lamps, or auxiliary driving lamps, which projects a beam of light of an intensity greater than twenty-five candle power, shall be so directed that no part of the beam will strike the level of the surface on which the vehicle stands at a distance of more than fifty feet from the vehicle. (1937, c. 407, s. 93.)

**§ 20-130.1. Use of red lights on front of vehicles prohibited; exceptions.**—It shall be unlawful for any person to drive upon the highways of this State any vehicle displaying red lights visible from the front of said vehicle. The provisions of this section shall not apply to police cars, highway patrol cars, vehicles owned by the Wildlife Resources Commission and operated exclusively for law enforcement purposes, ambulances, wreckers, fire fighting vehicles, school buses, a vehicle operated in the performance of his duties or services by any member of a municipal or rural fire department, paid or voluntary, or vehicles of a voluntary life-saving organization that have been officially approved by the local police authorities and manned or operated by members of such organization while on official call or to such lights as may be prescribed by the Interstate Commerce Commission, or to maintenance or construction vehicles or equipment of the State Highway Commission engaged in performing maintenance or construction work on the roads. The provisions of this section shall not apply to motor vehicles used in law enforcement by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, regardless of whether or not the vehicle is owned by the county. (1943, c. 726; 1947, c. 1032; 1953, c. 354; 1955, c. 528; 1957, c. 65, s. 11; 1959, c. 166, s. 2; c. 1170, s. 2.)

**Section Applies to Vehicles Operated at Time Lights Are Required.**—While it is true that this section declares that it shall be unlawful to display red lights visible in front of a vehicle, it may be fairly assumed

that the General Assembly intended the section to apply to vehicles operated at the time when lights are required, as provided in § 20-129. *Hollifield v. Everhart*, 237 N.C. 313, 74 S.E.2d 706 (1953).

**§ 20-131. Requirements as to head lamps and auxiliary driving lamps.**—(a) The head lamps of motor vehicles shall be so constructed, arranged, and adjusted that, except as provided in subsection (c) of this section, they will at all times mentioned in § 20-129, and under normal atmospheric conditions and on a level road, produce a driving light sufficient to render clearly discernible a person two hundred feet ahead, but any person operating a motor vehicle upon the highways, when meeting another vehicle, shall so control the lights of the vehicle operated by him by shifting, depressing, deflecting, tilting, or dimming the headlight beams in such manner as shall not project a glaring or dazzling light to persons within a distance of 500 feet in front of such head lamp. Every new motor vehicle, other than a motorcycle or motor-driven cycle, registered in this State after January 1, 1956, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

(b) Head lamps shall be deemed to comply with the foregoing provisions prohibiting glaring and dazzling lights if none of the main bright portion of the head lamp beams rises above a horizontal plane passing through the lamp centers parallel to the level road upon which the loaded vehicle stands, and in no case higher than forty-two inches, seventy-five feet ahead of the vehicle.

(c) Whenever a motor vehicle is being operated upon a highway, or portion thereof, which is sufficiently lighted to reveal a person on the highway at a distance of two hundred feet ahead of the vehicle, it shall be permissible to dim the head lamps or to tilt the beams downward or to substitute therefor the light from an auxiliary driving lamp or pair of such lamps, subject to the restrictions as to tilted beams and auxiliary driving lamps set forth in this section.

(d) Whenever a motor vehicle meets another vehicle on any highway it shall be permissible to tilt the beams of the head lamps downward or to substitute therefor the light from an auxiliary driving lamp or pair of such lamps subject to the requirement that the tilted head lamps or auxiliary lamp or lamps shall give sufficient illumination under normal atmospheric conditions and on a level road to render clearly discernible a person seventy-five feet ahead, but shall not project a glaring or dazzling light to persons in front of the vehicle: Provided, that at all times required in § 20-129 at least two lights shall be displayed on the front of and on opposite sides of every motor vehicle other than a motorcycle, road roller, road machinery, or farm tractor.

(e) No city or town shall enact an ordinance in conflict with this section. (1937, c. 407, s. 94; 1939, c. 351, s. 1; 1955, c. 1157, ss. 6, 7.)

**Cross References.**—As to failure to dim headlights not cause for suspension or revocation of driver's license, see § 20-18. As to penalties imposed for failure to dim headlights, see § 20-181. As to failure or inability of operator to stop vehicle within radius of lights, see § 20-141 (e).

**Lights May Be Dimmed for Better Visibility.**—The duty of a motorist to dim or deflect his headlights is not restricted by this section solely to instances in which he is meeting oncoming traffic, since this section refers to "normal atmospheric conditions"; therefore, it may be permissible for a motorist to deflect his headlights when driving in fog or other atmospheric conditions in which deflected headlights afford better visibility. *Short v. Chapman*, 261 N.C. 674, 136 S.E.2d 40 (1964).

**Requirements Differ from § 20-129 (e).**—

The requirement of subsection (e) of § 20-129 is entirely different from the requirement for motor vehicles, when used at night, as set forth in subsection (a) of this section. *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

**Contributory Negligence.**—In an action for damages due to negligence of defendants, where the evidence showed that plaintiffs, on a joint enterprise, driving their car about 2:00 o'clock A. M., at 40 or 45 miles per hour, with lights dimmed so that they could not see ahead over 75 to 100 feet, never applied the brakes and failed to see defendants' truck until after the collision, crashing into the back of the truck with terrific force, plaintiffs were guilty of contributory negligence which



was a proximate cause of the accident, thereby barring their recovery. *Pike v. Seymour*, 222 N.C. 42, 21 S.E.2d 884 (1942).

**Applied** in *Cronenberg v. United States*, 123 F. Supp. 693 (E.D.N.C. 1954).

**Quoted** in *Newbern v. Leary*, 215 N.C.

134, 1 S.E.2d 384 (1939); as to subsections (a) and (d), in *Keener v. Beal*, 246 N.C. 247, 98 S.E.2d 19 (1957).

**Cited** in *Singletary v. Nixon*, 239 N.C. 634, 80 S.E.2d 676 (1954); *Smith v. Kingston*, 249 N.C. 160, 105 S.E.2d 648 (1958).

§ 20-132. **Acetylene lights.**—Motor vehicles may be equipped with two acetylene head lamps of approximately equal candle power when equipped with clear plane glass fronts, bright six-inch spherical mirrors, and standard acetylene five-eighths foot burners not more and not less and which do not project a glaring or dazzling light into the eyes of approaching drivers. (1937, c. 407, s. 95.)

§ 20-133. **Enforcement of provisions.**—(a) The Commissioner is authorized to designate, furnish instructions to and to supervise official stations for adjusting head lamps and auxiliary driving lamps to conform with the provisions of § 20-129. When head lamps and auxiliary driving lamps have been adjusted in conformity with the instructions issued by the Commissioner, a certificate of adjustment shall be issued to the driver of the motor vehicle on forms issued in duplicate by the Commissioner and showing date of issue, registration number of the motor vehicle, owner's name, make of vehicle and official designation of the adjusting station.

(b) The driver of any motor vehicle equipped with approved head lamps, auxiliary driving lamps, rear lamps or signal lamps, who is arrested upon a charge that such lamps are improperly adjusted or are equipped with bulbs of a candle power not approved for use therewith, shall be allowed forty-eight hours within which to bring such lamps into conformance with the requirements of this article. It shall be a defense to any such charge that the person arrested produce in court or submit to the prosecuting attorney a certificate from an official adjusting station showing that within forty-eight hours after such arrest such lamps have been made to conform with the requirements of this article. (1937, c. 407, s. 96.)

§ 20-134. **Lights on parked vehicles.**—Whenever a vehicle is parked or stopped upon a highway, whether attended or unattended during the times mentioned in § 20-129, there shall be displayed upon such vehicle one or more lamps projecting a white or amber light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle, and projecting a red light visible under like conditions from a distance of five hundred feet to the rear, except that local authorities may provide by ordinance that no lights need be displayed upon any such vehicle when parked in accordance with local ordinances upon a highway where there is sufficient light to reveal any person within a distance of two hundred feet upon such highway. (1937, c. 407, s. 97; 1959, c. 1264, s. 9.)

**Cross Reference.**—As to right of motorist to assume that others will comply with this section, see note to § 20-129.

**Design of Section.**—This section is designed to promote safe use of the public highways. *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

**This section is inapplicable unless there be a parking in violation of § 20-161.** *Meece v. Dickson*, 252 N.C. 300, 113 S.E.2d 578 (1960).

**Section 20-161 does not conflict with nor reduce the obligation imposed on the operator of a motor vehicle stopped or parked on the highway at night to light his vehicle as required by this section and**

§ 20-129. *Melton v. Crotts*, 257 N.C. 121, 125 S.E.2d 396 (1962).

**This section is inapplicable to a motor vehicle parked in a residential district in a city or town on a street which constitutes no part of the highway system.** *Smith v. Goldsboro Iron & Metal Co.*, 257 N.C. 143, 125 S.E.2d 377 (1962).

**It is not necessarily unlawful in all cases to park a vehicle at night on the paved portion of a highway without lights thereon, as an emergency may arise thereby making it impossible to move such vehicle immediately.** *Pike v. Seymour*, 222 N.C. 42, 21 S.E.2d 884 (1942).

**Violation Is Negligence Per Se.**—The

parking of a truck on a public highway at night without lights in violation of this section is negligence per se, and the question of proximate cause is for the determination of the jury. [This case was decided under the corresponding section of the former law.] *Barrier v. Thomas & Howard Co.*, 205 N.C. 425, 171 S.E. 626 (1933).

Parking on a paved highway at night, without flares or other warning, is negligence. *Allen v. Dr. Pepper Bottling Co.*, 223 N.C. 118, 25 S.E.2d 388 (1943).

Leaving a disabled marine corps wrecker standing on the highway in the nighttime without the lights and warning signals required by this section and § 20-161 constituted negligence. *United States v. First-Citizens Bank & Trust Co.*, 208 F.2d 280, (4th Cir.) affirming *Rosenblatt v. United States*, 112 F. Supp. 114 (E.D.N.C. 1953).

A violation of this section is negligence per se. *Correll v. Gaskins*, 263 N.C. 212, 139 S.E.2d 202 (1964).

**Disabled Bus.**—It is negligence to permit a disabled bus to stand on a highway at night without lights, blocking a lane of traffic, without giving warning to approaching vehicles. *Dezern v. Asheboro City Bd. of Educ.*, 260 N.C. 535, 133 S.E.2d 204 (1963).

**Instruction.**—Defendant was entitled to an instruction, even in the absence of request therefor, in substance, as follows:

**§ 20-135. Safety glass.**—(a) It shall be unlawful to operate knowingly, on any public highway or street in this State, any motor vehicle which is registered in the State of North Carolina and which shall have been manufactured or assembled on or after January first, one thousand nine hundred and thirty-six, unless such motor vehicle be equipped with safety glass wherever glass is used in doors, windows, windshields, wings or partitions; or for a dealer to sell a motor vehicle manufactured or assembled on or after January first, one thousand nine hundred and thirty-six, for operation upon the said highways or streets unless it be so equipped. The provisions of this article shall not apply to any motor vehicle if such motor vehicle shall have been registered previously in another state by the owner while the owner was a bona fide resident of said other state.

(b) The term "safety glass" as used in this article shall be construed as meaning glass so treated or combined with other materials as to reduce, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by glass when the glass is cracked or broken.

(c) The Department of Motor Vehicles shall approve and maintain a list of the approved types of glass, conforming to the specifications and requirements for safety glass as set forth in this article, and in accordance with standards recognized by the United States Bureau of Standards, and shall not issue a license for or relicense any motor vehicle subject to the provisions of this article unless such motor vehicle be equipped as herein provided with such approved type of glass.

(d) The owner of any motor vehicle which is operated knowingly or any dealer who sells a motor vehicle in violation of the provisions of this article shall be

If the jury find by the greater weight of the evidence that plaintiff stopped his car and permitted it to stand, without lights, on the paved portion of the road in defendant's right lane of travel, such conduct on the part of the plaintiff would constitute negligence as a matter of law; and if the jury find by the greater weight of the evidence that such negligence was a proximate cause of the collision and plaintiff's injuries, the jury is instructed to answer the contributory negligence issue, "Yes." *Correll v. Gaskins*, 263 N.C. 212, 139 S.E.2d 202 (1964).

**Jury Question.** — Evidence that the driver of a car left the vehicle standing unattended without lights at nighttime, partially on the hard surface, and that plaintiff was unable to stop before striking the rear of the vehicle when he first saw it upon resuming his bright lights after dimming his lights in response to oncoming traffic, was sufficient to be submitted to the jury on the issue of negligence. *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

**Applied in** *Bumgardner v. Allison*, 238 N.C. 621, 78 S.E.2d 752 (1953); *Kinsey v. Town of Kenly*, 263 N.C. 376, 139 S.E.2d 686 (1965).

**Cited in** *McKinnon v. Howard Motor Lines*, 228 N.C. 132, 44 S.E.2d 735 (1947); *Keener v. Beal*, 246 N.C. 247, 98 S.E.2d 19 (1957).

deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than twenty-five dollars or be imprisoned not more than thirty days, or both, in the discretion of the court. (1937, c. 407, s. 98; 1941, c. 36.)

**§ 20-135.1. Safety belts.**—(a) The Commissioner shall establish specifications or requirements for approved type safety belts and safety harness and attachments.

(b) No person shall sell, offer or keep for sale any safety belt, safety harness, or attachment thereto as referred to in subsection (a) for use in a vehicle, unless of a type and brand which has been approved by the Commissioner. (1957, c. 1038, s. 2.)

**§ 20-135.2. Safety belts and anchorages.**—(a) Every new motor vehicle registered in this State and manufactured, assembled, or sold after January 1, 1964, shall, at the time of registration, be equipped with at least two sets of seat safety belts for the front seat of the motor vehicle. Such seat safety belts shall be of such construction, design, and strength to support a loop load strength of not less than five thousand (5,000) pounds for each belt, and must be of a type approved by the Commissioner.

This subsection shall not apply to passenger motor vehicles having a seating capacity in the front seat of less than two passengers.

(b) After July 1, 1962, no seat safety belt shall be sold for use in connection with the operation of a motor vehicle on any highway of this State unless it shall be constructed and installed as to have a loop strength through the complete attachment of not less than five thousand (5,000) pounds and the buckle or closing device shall be of such construction and design that after it has received the aforesaid loop belt load it can be released with one hand with a pull of less than forty-five (45) pounds.

(c) The provisions of this section shall apply only to passenger vehicles of nine (9) passenger capacity or less, except motorcycles. (1961, c. 1076; 1963, c. 288.)

**Editor's Note.**—The 1963 amendment rewrote subsection (a).

**§ 20-135.3. Seat belt anchorages for rear seats of motor vehicles.**—Every new motor vehicle registered in this State and manufactured, assembled or sold after July 1, 1966, shall be equipped with sufficient anchorage units at the attachment points for attaching at least two sets of seat safety belts for the rear seat of the motor vehicle. Such anchorage units at the attachment points shall be of such construction, design and strength to support a loop load strength of not less than five thousand (5,000) pounds for each belt.

The provisions of this section shall apply to passenger vehicles of nine-passenger capacity or less, except motorcycles. (1965, c. 372.)

**§ 20-136. Smoke screens.**—(a) It shall be unlawful for any person or persons to drive, operate, equip or be in the possession of any automobile or other motor vehicle containing, or in any manner provided with, a mechanical machine or device designed, used or capable of being used for the purpose of discharging, creating or causing, in any manner, to be discharged or emitted, either from itself or from the automobile or other motor vehicle to which attached, any unusual amount of smoke, gas or other substance not necessary to the actual propulsion, care and keep of said vehicle, and the possession by any person or persons of any such device, whether the same is attached to any such motor vehicle, or detached therefrom, shall be prima facie evidence of the guilt of such person or persons of a violation of this section.

(b) Any person or persons violating the provisions of this section shall be guilty of a felony, and upon conviction shall be imprisoned in the State's prison



for a period of not less than one year or not more than ten years, in the discretion of the court. (1937, c. 407, s. 99.)

**§ 20-136.1. Location of television viewers.**—No person shall drive any motor vehicle equipped with any television viewer, screen, or other means of visually receiving a television broadcast which is located in the motor vehicle at any point forward of the back of the driver's seat, or which is visible to the driver while operating the motor vehicle. (1949, c. 583, s. 4.)

**§ 20-137. Unlawful display of emblem or insignia.**—It shall be unlawful for any person to display on his motor vehicle, or to allow to be displayed on his motor vehicle, any emblem or insignia of any organization, association, club, lodge, order, or fraternity, unless such person be a member of the organization, association, club, lodge, order, or fraternity, the emblem or insignia of which is so displayed.

Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be subject to a fine not exceeding fifty dollars (\$50) or imprisonment for a period not exceeding thirty days. (Ex. Sess. 1924, c. 63.)

**Editor's Note.**—The effect of this act was summarized in 3 N.C.L. Rev. 25.

#### Part 10. Operation of Vehicles and Rules of the Road.

**§ 20-138. Persons under the influence of intoxicating liquor or narcotic drugs.**—It shall be unlawful and punishable, as provided in § 20-179, for any person, whether licensed or not, who is a habitual user of narcotic drugs or any person who is under the influence of intoxicating liquor or narcotic drugs, to drive any vehicle upon the highways within this State. (1937, c. 407, s. 101.)

**Cross References.**—As to revocation of license for driving while intoxicated, see § 20-17. See note to § 20-179.

**Editor's Note.**—Some of the cases treated below were decided under the corresponding provisions of earlier laws, but should be of assistance in the interpretation of the present section.

For note on offense of driving under the influence of intoxicating liquor when vehicle is motionless, see 36 N.C.L. Rev. 322 (1958).

This section creates and defines three separate criminal offenses. Under its provisions, it is unlawful and punishable as provided in § 20-179 for any person, whether licensed or not, (1) who is a habitual user of narcotic drugs, or (2) who is under the influence of intoxicating liquor, or (3) who is under the influence of narcotic drugs, to drive any vehicle upon the highways within this State. *State v. Thompson*, 257 N.C. 452, 126 S.E.2d 58 (1962).

**Elements of Offense.**—This section defines three distinct elements of the offense: (1) Driving a vehicle; (2) upon a highway within the State; (3) while under the influence of intoxicating liquor or narcotic drugs. *State v. Haddock*, 254 N.C. 162, 118 S.E.2d 411 (1961).

**Aiders and Abettors Guilty as Principals.**

**pals.**—The unlawful operation of a vehicle upon a highway within this State while under the influence of intoxicating liquor within the meaning of this section is a misdemeanor and all who participate therein as aiders and abettors or otherwise, are guilty as principals. *State v. Nall*, 239 N.C. 60, 79 S.E.2d 354 (1953).

**Permitting Intoxicated Person to Drive.**—When an owner places his motor vehicle in the hands of an intoxicated driver, sits by his side, and permits him, without protest, to operate the vehicle on a public highway while in a state of intoxication, the owner is as guilty as the man at the wheel. *State v. Gibbs*, 227 N.C. 677, 44 S.E.2d 201 (1947).

**Death caused by a violation of this section may be manslaughter** but a condition precedent to conviction is that the violation of the law in this respect must have caused the wreck and the death of deceased. *State v. Dills*, 204 N.C. 33, 167 S.E. 459 (1933).

One who drives his automobile, in violation of this section, and runs into another car and thereby proximately causes the death of one of the occupants, is guilty of manslaughter at least. *State v. Stansell*, 203 N.C. 69, 164 S.E. 580 (1932).

**Necessity That Causal Connection Be Shown.**—The violation of § 20-154 and this

section, if conceded, is not sufficient to sustain a prosecution for involuntary manslaughter, unless a causal relation is shown between the breach of the statute and the death. *State v. Lowery*, 223 N.C. 598, 27 S.E.2d 638 (1943).

**Violation of Statute Not Proximate Cause of Accident.**—In a prosecution for manslaughter under repealed § 14-387, relating to drunken driving, it was held that the violation of that section was not the proximate cause of the fatal accident. *State v. Miller*, 220 N.C. 660, 18 S.E.2d 143 (1942).

**Operation of Vehicle Imports Motion.**—In a prosecution under repealed § 14-387, similar to this section, defendant testified that he was not driving the truck, but that the driver got out to examine the motor when the truck stalled, and that defendant placed his foot on the brake to keep the truck from rolling backward. The court charged the jury to the effect that holding his foot on the brake to keep the truck from rolling backward was an operation of the truck within the meaning of the statute. Held: The operation of a motor vehicle within the meaning of the statute imports motion of the vehicle, and does not include the acts of defendant as testified to by him. *State v. Hatcher*, 210 N.C. 55, 185 S.E. 435 (1936).

**Portion of Sidewalk as Highway.**—The portion of a sidewalk between a street and a filling station, open to the use of the public as a matter of right for the purposes of vehicular traffic, is a "highway" within the meaning of this section. *State v. Perry*, 230 N.C. 361, 53 S.E.2d 288 (1949).

**"Under the Influence" Defined.**—A person is under the influence of intoxicating liquor or narcotic drugs, within the meaning and intent of this section, when he has drunk a sufficient quantity of intoxicating beverages or taken a sufficient amount of narcotic drugs to cause him to lose the normal control of his bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties. *State v. Carroll*, 226 N.C. 237, 37 S.E.2d 688 (1946); *State v. Lee*, 237 N.C. 263, 74 S.E.2d 654 (1953); *State v. Turberville*, 239 N.C. 25, 79 S.E.2d 359 (1953); *State v. Nall*, 239 N.C. 60, 79 S.E.2d 354 (1953); *State v. Hairr*, 244 N.C. 506, 94 S.E.2d 472 (1956); *State v. Green*, 251 N.C. 141, 110 S.E.2d 805 (1959).

A person drunk by the use of intoxicating liquor is necessarily under the influence of intoxicating liquor within the intent

and meaning of this section. *Southern Nat'l Bank v. Lindsey*, 264 N.C. 585, 142 S.E.2d 357 (1965); *State v. Stephens*, 262 N.C. 45, 136 S.E.2d 209 (1964).

In prosecution under this section, an instruction that defendant was under the influence of intoxicants if he had drunk a sufficient amount to make him think or act differently than he would otherwise have done, regardless of the amount, and that he was "under the influence" if his mind and muscles did not normally co-ordinate or if he was abnormal in any degree from intoxicants was held without error. *State v. Biggerstaff*, 226 N.C. 603, 39 S.E.2d 619 (1946).

The correct test is not whether the party had drunk or consumed a spoonful or a quart of intoxicating beverage, but whether a person is under the influence of an intoxicating liquor or narcotic drug by reason of his having drunk a sufficient quantity of an intoxicating beverage or taken a sufficient amount of narcotic drugs, to cause him to lose normal control of his bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties. *State v. Ellis*, 261 N.C. 606, 135 S.E.2d 584 (1964).

**"Under the Influence" and "Drunk" Not Synonymous.**—"Under the influence of an intoxicant" and "drunk" are not necessarily synonymous. *Davis v. Rigsby*, 261 N.C. 684, 136 S.E.2d 33 (1964). But see the earlier decision of *State v. Carroll*, 226 N.C. 237, 37 S.E.2d 688 (1946).

"Drunk" within the meaning of § 14-335 is not synonymous with "under the influence of intoxicating liquor" within the intent of this section and § 20-139. *State v. Painter*, 261 N.C. 332, 134 S.E.2d 638 (1964).

Hence, in a prosecution for public drunkenness under § 14-335 an instruction applying the definition of "under the influence of intoxicating liquor" must be held for prejudicial error. *State v. Painter*, 261 N.C. 332, 134 S.E.2d 638 (1964).

**Being Drunk Distinguished from Being under the Influence of Intoxicating Beverages.**—See *State v. Painter*, 261 N.C. 332, 134 S.E.2d 638 (1964).

**Instruction on Intoxication Held Erroneous.**—An instruction that a person is under the influence of intoxicating liquor when "he has drunk a sufficient quantity of alcoholic liquor or beverage to affect, however slightly, his mind and his muscles, his mental and his physical faculties" is erroneous. *State v. Carroll*, 226 N.C. 237, 37 S.E.2d 688 (1946).

**Instruction on Intoxication Held Proper.**—In a prosecution for drunken driving under repealed § 14-387, an instruction that defendant was under the influence of intoxicating liquor if he had drunk enough to make him act or think differently than he would have acted or thought if he had not drunk any, regardless of the amount he drank, was held without error. *State v. Harris*, 213 N.C. 648, 197 S.E. 142 (1938).

In an instruction stating the degree of impairment of the faculties necessary to render one "under the influence" of intoxicating liquor within the meaning of this section, the use of the word "perceptibly" instead of the word "appreciably" without explanation of what it means, is not error. While the language of the rule in *State v. Carroll*, 226 N.C. 237, 37 S.E.2d 688 (1946), is preferred, there is not in the word "perceptible" sufficient difference in meaning and common understanding for the rule to have been misunderstood by the jury. *State v. Lee*, 237 N.C. 263, 74 S.E.2d 654 (1953).

Evidence tending to show that defendant was seen driving his truck some 30 minutes before a highway patrolman reached the scene of the accident, that defendant had then been arrested and was in the custody of a deputy sheriff, that defendant was in a highly intoxicated condition, and that no intoxicating liquor was found in or about the vehicle, was held sufficient to support an instruction in regard to the law if defendant at the time of the accident was driving while under the influence of intoxicating liquor. *State v. Lindsey*, 264 N.C. 588, 142 S.E.2d 355 (1965).

**Instructions Held Prejudicial Wherein Defendant Stated to Be Driver.**—See *State v. Swaringen*, 249 N.C. 38, 105 S.E.2d 99 (1958).

The use of the term "any beverage containing alcohol," rather than the term "intoxicating beverage," in the court's charge defining the expression "under the influence of intoxicating liquor" in a prosecution for drunken driving, was not prejudicial. *State v. Nall*, 239 N.C. 60, 79 S.E.2d 354 (1953).

**Violation Must Be Shown Beyond a Reasonable Doubt.**—Before the State is entitled to a conviction under this section, it must show beyond a reasonable doubt that the defendant was driving a motor vehicle on a public highway of the State while under the influence of intoxicating liquor or narcotic drugs. *State v. Carroll*, 226 N.C. 237, 37 S.E.2d 688 (1946); *State v. Lee*, 237 N.C. 263, 74 S.E.2d 654 (1953);

*State v. Nall*, 239 N.C. 60, 79 S.E.2d 354 (1953); *State v. Hairr*, 244 N.C. 506, 94 S.E.2d 472 (1956).

**Circumstantial Evidence May Suffice.**—Though the evidence on the part of the State as to violation of this section is circumstantial, it may be sufficient to be submitted to a jury. *State v. Newton*, 207 N.C. 323, 177 S.E. 184 (1934).

**Sufficiency of Evidence of Intoxication.**—The testimony of two witnesses to the effect that from the detection of some "foreign" odor of an intoxicant from the mouth of a man whom they had not seen before, and who had been knocked unconscious by a blow on the head, they were of opinion he was under the influence of intoxicating liquor, standing alone, was insufficient to constitute substantial evidence that the man, previously, while driving an automobile on the highway, had been under the influence of intoxicants to the extent held necessary in *State v. Carroll*, 226 N.C. 237, 37 S.E.2d 688 (1946), to constitute violation of this section. *State v. Flinchem*, 228 N.C. 149, 44 S.E.2d 724 (1947).

It is not sufficient for a conviction under this section for the State to show that defendant drove an automobile upon a highway within the State when he had drunk a sufficient quantity of intoxicating liquor to affect however slightly his mental and physical faculties. The State must show that he has drunk a sufficient quantity of intoxicating liquor to cause him to lose the normal control of his bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties. *State v. Hairr*, 244 N.C. 506, 94 S.E.2d 472 (1956).

The fact that a motorist has been drinking, when considered in connection with faulty driving such as following an irregular course on the highway or other conduct indicating an impairment of physical or mental faculties, is sufficient, prima facie, to show a violation of this section. *State v. Hewitt*, 263 N.C. 759, 140 S.E.2d 241 (1965).

**Testimony as to Results of Blood Test Admissible.**—In a prosecution for drunken driving it is competent for an expert witness to testify as to the results of a test of the defendant's blood, based on a sample taken less than an hour after the alleged offense with defendant's consent, as to the alcoholic content of the blood. *State v. Willard*, 241 N.C. 259, 84 S.E.2d 899 (1954); *State v. Moore*, 245 N.C. 158, 95 S.E.2d 548 (1956).



Assuming the blood specimen is obtained at or near the pertinent time and identified and traced until chemical analysis thereof is made, in a prosecution under this section testimony of a qualified expert (1) as to the making and results of a chemical analysis of such blood specimen to determine the alcoholic content thereof, and (2) as to the effects of certain percentages of alcohol in the blood stream, is competent. *State v. Paschal*, 253 N.C. 795, 117 S.E.2d 749 (1961).

**Significance of Answering, "No," When Asked If Blood Test Wanted.**—Where defendant did not refuse to submit to a blood test, but simply answered, "No," when asked by a police officer if he wanted one, and presumably such blood test, if requested by defendant, would have been made at his expense, the only significance of his statement was that he did not choose to go to the expense of having such blood test made and his unwillingness to incur this expense was without probative significance in relation to his guilt or innocence. The testimony as to the officer's inquiry and defendant's response was susceptible of use and probably was used to the defendant's prejudice and the admission of the challenged testimony was prejudicial error. *State v. Paschal*, 253 N.C. 795, 117 S.E.2d 749 (1961).

**When Nonsuit Proper.**—Officers who reached the scene of an accident some thirty minutes after it occurred testified that in their opinion defendant driver was intoxicated or under the influence of something, and one of them testified that he smelled something on defendant's breath, but both testified that they did not know whether defendant's condition was due to drink or to injuries sustained by him in the accident. It was held that the evidence raises no more than a suspicion or conjecture as to whether defendant was driving under the influence of liquor or narcotic drugs, and defendant's motion as of nonsuit should have been allowed. *State v. Hough*, 229 N.C. 532, 50 S.E.2d 496 (1948).

**Evidence held sufficient to be submitted to the jury** on a charge of driving a motor vehicle on the highways while under the influence of intoxicants in violation of this section. *State v. Blankenship*, 229 N.C. 589, 50 S.E.2d 724 (1948). See *State v. Sawyer*, 230 N.C. 713, 55 S.E.2d 464 (1949).

**In Prosecution for Manslaughter.**—Evidence that defendant was driving on the public highways of the State while under the influence of intoxicating liquor in violation of this section, and was driving recklessly in violation of § 20-140, which proximately

caused the death of a passenger in his car, is sufficient to be submitted to the jury in a prosecution for manslaughter. *State v. Blankenship*, 229 N.C. 589, 50 S.E.2d 724 (1948).

**Duty of Judge to Charge as to Good Character of Defendant.**—Where defendant was charged with operating a motor vehicle on the public highway while under the influence of intoxicating liquor, in the absence of request it was not incumbent upon the trial judge to charge specifically as to the effect of evidence of the good character of the defendant. This was not an essential feature of the case. *State v. Glaty*, 230 N.C. 177, 52 S.E.2d 277 (1949).

**Policeman May Arrest without Warrant.**—A policeman could arrest without a warrant a person in his presence violating repealed § 14-387, similar to this section. *State v. Loftin*, 186 N.C. 205, 119 S.E. 209 (1923).

The rule that when a misdemeanor or other criminal offense is committed in the presence of an officer, he may forthwith arrest the offender without a warrant, applies when the offense committed is the violation of this section. *State v. Pillow*, 234 N.C. 146, 66 S.E.2d 657 (1951).

**In a prosecution for drunken driving, the arresting officer may be asked his opinion as to whether at the time the arrest was made the defendant was under the influence of liquor.** *State v. Warren*, 236 N.C. 358, 72 S.E.2d 763 (1952).

**Effect of Family Connection between Accused and Arresting Officer.**—Where defendant introduces evidence of ill will between himself and his brother-in-law (the deputy sheriff who arrested him for drunken driving), it is error for the court to charge that the jurors should disabuse their minds of any family connection. *State v. Kirk*, 260 N.C. 447, 133 S.E.2d 65 (1963).

**Admissibility of Opinion of Lay Witness.**—A lay witness is competent to testify whether or not in his opinion a person was under the influence of an intoxicant on a given occasion on which he observed him. *State v. Willard*, 241 N.C. 259, 84 S.E.2d 899 (1954).

**Evidence Sufficient to Show Violation of Section.**—See *State v. Pillow*, 234 N.C. 146, 66 S.E.2d 657 (1951).

**Evidence Sufficient for Jury.**—See *State v. Simpson*, 233 N.C. 438, 64 S.E.2d 568 (1951); *State v. Cole*, 241 N.C. 576, 86 S.E.2d 203 (1955); *State v. St. Clair*, 246 N.C. 183, 97 S.E.2d 840 (1957); *State v. Green*, 251 N.C. 40, 110 S.E.2d 609 (1959).

Evidence that defendant was highly

intoxicated when sheriff caught up with him after a chase was sufficient to take charge of driving under the influence of intoxicants to the jury. *State v. Garner*, 244 N.C. 79, 92 S.E.2d 445 (1956).

Evidence that defendant was intoxicated within the purview of this section held amply sufficient to be submitted to the jury even in the absence of expert testimony as to the alcoholic content of defendant's blood. *State v. Willard*, 241 N.C. 259, 84 S.E.2d 899 (1954).

**Section Applicable to Farm Tractors.**—The General Assembly intended that while farm tractors are motor implements of husbandry as set forth in § 20-38, they are vehicles within the meaning of this section, when operated upon a highway by one under the influence of intoxicating liquor or narcotic drugs. *State v. Green*, 251 N.C. 141, 110 S.E.2d 805 (1959).

**Violation of Section Is Negligence Per Se.**—Defendant is guilty of negligence per se in operating his pickup truck while under the influence of intoxicating liquor in violation of this section. *Watters v. Parrish*, 252 N.C. 787, 115 S.E.2d 1 (1960).

It is negligence per se for one to operate an automobile while under the influence of an intoxicant within the meaning of this section. *Davis v. Rigsby*, 261 N.C. 684, 136 S.E.2d 33 (1964); *Southern Nat'l Bank v. Lindsey*, 264 N.C. 585, 142 S.E.2d 357 (1965).

**Punishment for Violation.** — This section does not provide that the court as a part of the punishment can revoke an operator's license to operate a motor vehicle. *Harrell v. Scheidt*, 243 N.C. 735, 92 S.E.2d 182 (1956). As to revocation of license by Department of Motor Vehicles, see §§ 20-17, 20-19.

**Warrant Should Contain Separate Count as to Each Offense Charged.**—With reference to the drafting of criminal warrants based on violations of this section, it is appropriate to emphasize: If it be intended to charge only one of the criminal offenses created and defined by this section, e.g., the operation of a motor vehicle upon the public highway within this State while under the influence of intoxicating liquor, the warrant should charge this criminal offense and no other. If it be intended to charge two or more of the criminal offenses created and defined in the section, the warrant should contain a separate count, complete within itself, as to each criminal offense. *State v. Thompson*, 257 N.C. 452, 126 S.E.2d 58 (1962).

**Warrant Held Sufficient.** — A warrant charging that the defendant "did unlaw-

fully and willfully operate a motor vehicle on the public roads while under the influence of intoxicating liquors, opiates or narcotic drugs," was held a sufficient charge of a violation of this section. *State v. Smith*, 240 N.C. 99, 81 S.E.2d 263 (1954).

A warrant, containing no reference to any specific statute or ordinance, disclosing on its face that it was drafted in the language of former § 14-387, was sufficient to charge the defendant with operating a motor vehicle upon the public streets of a town while "under the influence of intoxicating liquor or narcotic drugs," the language of this section, and by going to trial without making a motion to quash, defendant waived the right to attack the warrant on the ground of duplicity. *State v. Thompson*, 257 N.C. 452, 126 S.E.2d 58 (1962).

**Defendant's motion for judgment of nonsuit held properly denied** under authority of *State v. Carroll*, 226 N.C. 237, 37 S.E.2d 688 (1946). *State v. Warren*, 236 N.C. 358, 72 S.E.2d 763 (1952).

**Jurisdiction of Municipal Court.**—Where a statute creating a municipal court does not give it criminal jurisdiction over the offense described by repealed § 14-387, similar to this section, this jurisdiction was acquired by such section to the extent only of binding the defendant over to the superior court upon conviction. *State v. Jones*, 181 N.C. 543, 106 S.E. 827 (1921).

**Applied in** *State v. Davis*, 238 N.C. 252, 77 S.E.2d 630 (1953); *State v. Baker*, 240 N.C. 140, 81 S.E.2d 199 (1954); *State v. Bolling*, 240 N.C. 141, 81 S.E.2d 266 (1954); *Fox v. Scheidt*, 241 N.C. 31, 84 S.E.2d 259 (1954); *State v. White*, 246 N.C. 587, 99 S.E.2d 772 (1957); *State v. Collins*, 247 N.C. 244, 100 S.E.2d 489 (1957); *State v. Collins*, 247 N.C. 248, 100 S.E.2d 492 (1957); *Parks v. Washington*, 255 N.C. 478, 122 S.E.2d 70 (1961); *State v. Stroud*, 256 N.C. 458, 124 S.E.2d 136 (1962); *State v. Broadway*, 256 N.C. 608, 124 S.E.2d 568 (1962); *State v. Medlin*, 257 N.C. 773, 127 S.E.2d 552 (1962); *Porter v. Pitt*, 261 N.C. 482, 135 S.E.2d 42 (1964); *State v. Smith*, 261 N.C. 613, 135 S.E.2d 571 (1964); *Rice v. Rigsby*, 261 N.C. 687, 136 S.E.2d 35 (1964); *State v. Brown*, 262 N.C. 495, 137 S.E.2d 825 (1964); *State v. Forrest*, 262 N.C. 625, 138 S.E.2d 284 (1964); *State v. Virgil*, 263 N.C. 73, 138 S.E.2d 777 (1964); *State v. Anderson*, 263 N.C. 124, 139 S.E.2d 6 worth, 263 N.C. 158, 139 S.E.2d 235 (1964); (1964); *State v. Farrington*, 263 N.C. 128, 139 S.E.2d 3 (1964); *State v. Hollings-State v. Morgan*, 263 N.C. 400, 139 S.E.2d



708 (1965); *Brewer v. Garner*, 264 N.C. 384, 141 S.E.2d 806 (1965).

Quoted in *State v. Parker*, 220 N.C. 416, 17 S.E.2d 475 (1941); *State v. Robbins*, 243 N.C. 161, 90 S.E.2d 322 (1955); *State v. Stone*, 245 N.C. 42, 95 S.E.2d 77 (1956).

Stated in *Morrissey v. Crabtree*, 143 F. Supp. 105 (M.D.N.C. 1956).

Cited in *State v. Creech*, 210 N.C. 700, 188 S.E. 316 (1936); *State v. Carter*, 233

N.C. 581, 65 S.E.2d 9 (1951); *State v. Baucom*, 244 N.C. 61, 92 S.E.2d 426 (1956); *State v. St. Clair*, 248 N.C. 333, 103 S.E.2d 408 (1958); *State v. Medlin*, 250 N.C. 601, 108 S.E.2d 855 (1959); *Rick v. Murphy*, 251 N.C. 162, 110 S.E.2d 815 (1959); *State v. Ball*, 255 N.C. 351, 121 S.E.2d 604 (1961); *State v. Gurley*, 257 N.C. 270, 125 S.E.2d 445 (1962); *In re Donnelly*, 260 N.C. 375, 132 S.E.2d 904 (1963).

**§ 20-139. Operation upon driveways of public or private institutions while under the influence of intoxicating liquors, etc.**—It shall be unlawful for any person, whether licensed or not, who is a habitual user of narcotic drugs or who is under the influence of intoxicating liquor or narcotic drugs, to operate a motor vehicle over any drive, driveway, road, roadway, street, or alley upon the grounds and premises of any public or private hospital, college, university, school, orphanage, church, or any of the institutions maintained and supported by the State of North Carolina, or any of its subdivisions, or upon the grounds and premises of any service station, drive-in theater, supermarket, store, restaurant or office building, or any other business or municipal establishment providing parking space for customers, patrons, or the public. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided in § 20-179. (1939, c. 292; 1951, c. 1042, s. 1; 1959, c. 1264, s. 1.)

This section and § 20-138 each creates and defines a separate criminal offense. *State v. Davis*, 261 N.C. 655, 135 S.E.2d 663 (1964).

“Under the Influence” and “Drunk” Not Synonymous.—See same catchline in note to § 20-138.

Being Drunk Distinguished from Being under the Influence of Intoxicating Beverages.—See *State v. Painter*, 261 N.C. 332, 134 S.E.2d 638 (1964).

**§ 20-139.1. Results of chemical analysis admissible in evidence; presumptions.**—(a) In any criminal action arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's breath shall be admissible in evidence and shall give rise to the following presumptions:

If there was at that time 0.10 per cent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.

Per cent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred cubic centimeters of blood.

The foregoing provisions of subsection (a) of this section shall not be construed as limiting the introduction of any other competent evidence, including other types of chemical analyses, bearing upon the question whether the person was under the influence of intoxicating liquors.

(b) Chemical analyses of the person's breath, to be considered valid under the provisions of this section, shall have been performed according to methods approved by the State Board of Health and by an individual possessing a valid permit issued by the State Board of Health for this purpose. The State Board of Health is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the State Board of Health; provided that in no case shall the arresting officer or officers administer said test.



(c) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any test administered at the direction of a law enforcement officer. The person whose breath is being analyzed shall be furnished the results of such analysis at the time of taking the test. The failure or inability of the person tested to obtain an additional test shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer. Any law enforcement officer having in his charge any person who has submitted to the chemical test under the provisions of G.S. 20-16.2 shall assist such person in contacting a qualified person as set forth above for the purpose of administering such additional test.

(d) The individual making such chemical analysis of a person's breath shall record in writing the time of arrest, the time and results of such analysis, a copy of which record shall be furnished to the person submitting to said test or to his attorney prior to any trial or proceeding where the results of the test may be used. (1963, c. 966, s. 2.)

**Applied in** *State v. Powell*, 264 N.C. 73, 140 S.E.2d 705 (1965).

**§ 20-140. Reckless driving.** — (a) Any person who drives any vehicle upon a highway carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others shall be guilty of reckless driving.

(b) Any person who drives any vehicle upon a highway without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving.

(c) Any person convicted of reckless driving shall be punished by imprisonment not to exceed six months or by a fine, not to exceed five hundred dollars (\$500.00) or by both such imprisonment and fine, in the discretion of the court. (1937, c. 407, s. 102; 1957, c. 1368, s. 1; 1959, c. 1264, s. 8.)

**Editor's Note.**—Some of the cases cited below were decided under the corresponding provisions of the former law.

**This section is a safety statute.** *State v. Colson*, 262 N.C. 506, 138 S.E.2d 121 (1964).

**Legislative Purpose.**—This section was enacted for the protection of persons and property and in the interest of public safety, and the preservation of human life. *State v. Norris*, 242 N.C. 47, 86 S.E.2d 916 (1955).

The reckless driving and speed statutes are designed for the protection of life, limb and property. *State v. Ward*, 258 N.C. 330, 128 S.E.2d 673 (1962).

This section is designed to prevent injury to persons or property and prohibiting the careless and reckless driving of automobiles on the public highways. *State v. Colson*, 262 N.C. 506, 138 S.E.2d 121 (1964).

**Every operator of a motor vehicle is required to exercise reasonable care to avoid injury to persons or property of another, and a failure to so operate proximately resulting in injury to another gives rise to a cause of action.** *Scarlette v. Grindstaff*, 258 N.C. 159, 128 S.E.2d 221 (1962).

**This section prescribes a standard of care, "and the standard fixed by the legis-**

lature is absolute." *Kellogg v. Thomas*, 244 N.C. 722, 94 S.E.2d 903 (1956); *Alldridge v. Hasty*, 240 N.C. 353, 82 S.E.2d 331 (1954); *Lamm v. Gardner*, 250 N.C. 540, 108 S.E.2d 847 (1959); *Bondurant v. Mastin*, 252 N.C. 190, 113 S.E.2d 292 (1960); *Stockwell v. Brown*, 254 N.C. 662, 119 S.E.2d 795 (1961); *Boykin v. Bissette*, 260 N.C. 295, 132 S.E.2d 616 (1963).

Fundamental to the right to operate any motor vehicle is the rule of the prudent man declared in this section, that he shall operate with due care and circumspection so as not to endanger others by his reckless driving. *McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, Inc.*, 248 N.C. 146, 102 S.E.2d 816 (1958).

**Surrounding Circumstances Govern Case.**—Driving an automobile with tires which are known to be worn out and slick, on a highway which is wet and slippery, at a rate of speed not ordinarily unlawful, under this section may be unlawful under all the circumstances shown by the evidence. *Waller v. Hipp*, 208 N.C. 117, 179 S.E. 428 (1935).

The principle that the mere fact of a collision with a vehicle ahead furnishes some evidence that the following motorist was negligent as to speed, was following too closely, or failed to keep a proper

lookout is not absolute; the negligence, if any, depends upon the circumstances. *Powell v. Cross*, 263 N.C. 764, 140 S.E.2d 393 (1965).

**Care Required in Emergency.**—While the operator of a public automobile is obligated to exercise a high degree of care, he is not charged with the necessity, either of possessing superhuman powers of anticipation or of exercising such powers in a threatened emergency. *Love v. Queen City Lines*, 206 N.C. 575, 174 S.E. 514 (1934).

If the peril suddenly confronting the defendant was due to excessive speed or to his failure to maintain a proper lookout, the fact that care was exercised after the discovery of the peril would not excuse the negligent conduct which was the proximate cause of the injury and damage. The court should have so instructed the jury. *Brunson v. Gainey*, 245 N.C. 152, 95 S.E.2d 514 (1956).

**When Person Guilty of Reckless Driving.**—Under this section, a person is guilty of reckless driving (1) if he drives an automobile on a public highway in this State, carelessly and heedlessly, in a willful or wanton disregard of the rights or safety of others, or (2) if he drives an automobile on a public highway in this State without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property. *State v. Folger*, 211 N.C. 695, 191 S.E. 747 (1937).

It is unlawful to drive a motor vehicle upon a public highway carelessly and heedlessly, in willful or wanton disregard of the rights or safety of others, or without due circumspection and at a speed or in any manner so as to endanger or be likely to endanger any person or property. *State v. Norris*, 242 N.C. 47, 86 S.E.2d 916 (1955).

**Person may violate section by either one of the two courses of conduct defined in subsections (a) and (b), or in both respects.** *State v. Dupree*, 264 N.C. 463, 142 S.E.2d 5 (1965).

**A violation of this section may subject the offender to both civil and criminal liability.** There may be a violation of this section as a result of which the offender is subjected, in addition to civil liability, only to the penalty prescribed by statute, but when the negligent acts are reckless to the point of culpability and are sufficient to evince a complete and thoughtless disregard for the rights and safety of other persons using the highways, it then becomes criminal negligence and the driver of a motor vehicle so offending may be called upon to answer for manslaughter.

*ter. State v. McLean*, 234 N.C. 283, 67 S.E.2d 75 (1951).

**Alleging Violation of This Section Rather Than § 20-140.1.**—Where a complaint alleged reckless driving on a university campus as a violation of this section, the fact that the complaint alleged a violation of this section instead of a violation of § 20-140.1 was not fatal in the light of § 1-151, providing that pleadings shall be liberally construed, and in light of the theory of the trial court that campus roads were highways within the purview of this section. *Rhyné v. Bailey*, 254 N.C. 467, 119 S.E.2d 385 (1961).

**The language of this section constitutes culpable negligence.** *State v. Roberson*, 240 N.C. 745, 83 S.E.2d 798 (1954); *State v. Dupree*, 264 N.C. 463, 142 S.E.2d 5 (1965); *Southern Nat'l Bank v. Lindsey*, 264 N.C. 585, 142 S.E.2d 357 (1965).

**Culpable Negligence and Actionable Negligence Distinguished.**—Culpable negligence in the law of crimes is something more than actionable negligence in the law of torts. *State v. Roberson*, 240 N.C. 745, 83 S.E.2d 798 (1954).

Where there is an unintentional or inadvertent violation of this section, such violation, standing alone, does not constitute culpable negligence in the law of crimes as distinguished from actionable negligence in the law of torts. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. *State v. Sealy*, 253 N.C. 802, 117 S.E.2d 793 (1961).

**A motorist is under duty at all times to operate his vehicle at a reasonable rate of speed and maintain constant attention to the highway.** *Williams v. Henderson*, 230 N.C. 707, 55 S.E.2d 462 (1949); *Goodson v. Williams*, 237 N.C. 291, 74 S.E.2d 762 (1953).

**Duty to Keep Car under Control and Decrease Speed When Special Hazards Exist.**—The driver of an automobile is required at all times to operate his vehicle with due regard to traffic and conditions of the highway, and keep his car under control and decrease speed when special hazards exist by reason of weather or highway conditions or when necessary to avoid colliding with any other vehicle. This requirement, as expressed in this section and § 20-141, constitutes the hub of the motor vehicle law around which other provisions regulating the operation of motor vehicles



revolve. *Cox v. Lee*, 230 N.C. 155, 52 S.E.2d 355 (1949); *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

**Ability to Stop within Radius of Lights.**—And one who operates a motor vehicle during the nighttime must take notice of the existing darkness which limits visibility to the distance his headlights throw their rays, and he must operate his motor vehicle in such manner and at such speed as will enable him to stop within the radius of his lights. *Cox v. Lee*, 230 N.C. 155, 52 S.E.2d 355 (1949).

**Violation of Traffic Ordinance.**—The simple violation of a traffic regulation, which does not involve actual danger to life, limb or property, while importing civil liability if damage or injury ensue, would not perforce constitute the criminal offense of reckless driving. *State v. Cope*, 204 N.C. 28, 167 S.E. 456 (1933).

**Effect of Using Prudence after Violation.**—A reckless violation which put a driver in such position that he could not avoid an injury though attempting to do so after the danger became apparent, is not excused by the subsequent attempt. *State v. Gray*, 180 N.C. 697, 104 S.E. 647 (1920).

The fact that defendant at length made an effort to avoid the accident does not avail him when it appears that his recklessness was responsible for his inability to control the vehicle. *State v. Ward*, 258 N.C. 330, 128 S.E.2d 673 (1962).

**Speed of 55 Miles an Hour.**—In light of the provisions of this section and § 20-141 it is clear that whether or not a speed of 55 miles an hour is lawful depends upon the circumstances at the time. These sections provide that a motorist must at all times drive with due caution and circumspection and at a speed and in a manner so as not to endanger or be likely to endanger any person or property. At no time may a motorist lawfully drive at a speed greater than is reasonable and prudent under the conditions then existing. *Primm v. King*, 249 N.C. 228, 106 S.E.2d 223 (1958).

**Mere failure to keep a reasonable lookout** does not constitute reckless driving. To this must be added dangerous speed or perilous operation. *Dunlap v. Lee*, 257 N.C. 447, 126 S.E.2d 62 (1962); *State v. Dupree*, 264 N.C. 463, 142 S.E.2d 5 (1965).

**Violations Committed in One Continuous Operation of Vehicle Constitute One Offense.**—If a defendant is guilty of the acts condemned either under subsection (a) or (b), or both, in one continuous operation of his vehicle, he is guilty of one offense of reckless driving and not guilty

of two separate offenses. *State v. Lewis*, 256 N.C. 430, 124 S.E.2d 115 (1962).

**Violation of Section as Negligence.**—A motorist is required to act as a reasonably prudent man and to drive with due caution and circumspection and at a speed or in a manner so as not to endanger or be likely to endanger any person or property, and his failure to do so is negligence. *Crotts v. Overnite Transp. Co.*, 246 N.C. 420, 98 S.E.2d 502 (1957).

A violation of this section is negligence per se. *Stegall v. Sledge*, 247 N.C. 718, 102 S.E.2d 115 (1958); *Carswell v. Lackey*, 253 N.C. 387, 117 S.E.2d 51 (1960); *Robbins v. Harrington*, 255 N.C. 416, 121 S.E.2d 584 (1961); *Dunlap v. Lee*, 257 N.C. 447, 126 S.E.2d 62 (1962); *Boykin v. Bisette*, 260 N.C. 295, 132 S.E.2d 616 (1963); *Southern Nat'l Bank v. Lindsey*, 264 N.C. 585, 142 S.E.2d 357 (1965).

Evidence of greatly excessive speed in violation of the speed restrictions of § 20-141, and of reckless driving in violation of this section, were sufficient to make out a case of actionable negligence. *Bell v. Maxwell*, 246 N.C. 257, 98 S.E.2d 33 (1957).

All the evidence tended to show that plaintiff's decedent was killed by the actionable negligence of the driver of the automobile in which he was a passenger in driving it at an excessive speed in violation of § 20-141, subsection (b) (4), and in a reckless manner in violation of this section. *Bridges v. Graham*, 246 N.C. 371, 98 S.E.2d 492 (1957).

**Driving on Wrong Side of Road.**—The mere fact that defendant's automobile was on the left of the center line in the direction it was traveling when the collision occurred, without any evidence that it was being operated at a dangerous speed or in a perilous manner, except being on the wrong side of the road some 40 feet before the collision, does not show on defendant's part an intentional or wilful violation of subsection (b) of this section; nor does it show an unintentional violation of subsection (a) accompanied by such recklessness or carelessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting to a thoughtless disregard of consequences, or a heedless indifference, to the safety of others as imports criminal responsibility; and, hence, does not make out a case of reckless driving sufficient to carry the case to the jury. *State v. Dupree*, 264 N.C. 463, 142 S.E.2d 5 (1965).

**Skidding.**—The mere skidding of a motor vehicle is not evidence of, and does not



imply, negligence. *Webb v. Clark*, 264 N.C. 474, 141 S.E.2d 880 (1965).

But skidding may form the basis of a recovery where it and the resulting damage is caused from some fault of the operator amounting to negligence on his part. *Webb v. Clark*, 264 N.C. 474, 141 S.E.2d 880 (1965).

When the condition of a road is such that skidding may be reasonably anticipated, the driver of a vehicle must exercise care commensurate with the danger to keep the vehicle under control so as to avoid injury to occupants of the vehicle and others on or off the highway. *Webb v. Clark*, 264 N.C. 474, 141 S.E.2d 880 (1965).

**Operation of Vehicle in Drunken Condition.**—Defendant's perilous operation of his truck in a drunken condition constituted a driving of it upon the public highway without due caution and circumspection and in a manner so as to endanger persons or property, and was reckless driving within the intent and meaning of this section. *Southern Nat'l Bank v. Lindsey*, 264 N.C. 585, 142 S.E.2d 357 (1965).

**Jurisdiction of Mayor's Court — Excessive Sentence.**—Defendant was tried in the mayor's court of North Wilkesboro on charges of operating a motor vehicle while under the influence of intoxicating liquor and reckless driving. On appeal to the superior court, judgment was pronounced exceeding that permitted for the offense of reckless driving alone. It was held that the mayor's court was without jurisdiction of the charge of operating a motor vehicle while under the influence of intoxicating liquor, and even conceding it had jurisdiction of the charge of reckless driving, the sentence exceeded that permitted for that offense, and the trial of defendant in the superior court upon the warrants, without a bill of indictment first being found and returned, was a nullity. *State v. Johnson*, 214 N.C. 319, 199 S.E. 96 (1938).

**Proof of Violation in Criminal Prosecutions.**—Our statutes on the subject of regulating the care to be used by those driving motor vehicles upon the State's highways are to secure the reasonable safety of persons in and upon the highways of the State, and where death or great bodily harm results, evidence that the accused was, at the time charged, violating these provisions may be properly received upon a trial for murder or for manslaughter in appropriate instances, or as evidence of an assault where no serious injury has resulted. *State v. Suddarth*, 184 N.C. 753, 114 S.E. 828 (1922).

**Proximate Cause Is Question for Jury.**—The violation of this and succeeding sections enacted for the safety of those driving upon the highway is negligence per se, and when such violation is admitted or established the question of proximate cause is ordinarily for the jury. *Godfrey v. Queen City Coach Co.*, 201 N.C. 264, 159 S.E. 412 (1931); *King v. Pope*, 202 N.C. 554, 163 S.E. 447 (1932).

The better rule under this and the following section is that except where the evidence is so conclusive that there could be, in the minds of reasonable men, no doubt as to the plaintiff's negligence contributing to the injury, the question should be left to the jury. *Morris v. Sells-Floto Circus*, 65 F.2d 782 (4th Cir. 1933).

Evidence that the individual defendant drove his car in a negligent manner in violation of this and other sections and that such negligence proximately caused injury to the plaintiff is held sufficient to have been submitted to the jury. *Puckett v. Dyer*, 203 N.C. 684, 167 S.E. 43 (1932).

**Sufficient Evidence to Sustain Negligence and Proximate Cause as a Matter of Law.**—*Smith v. Miller*, 209 N.C. 170, 183 S.E. 370 (1936).

An indictment under this section may be consolidated for trial with an indictment under § 20-217, which prohibits the driver of a motor vehicle from passing a standing school bus on the highway without first bringing said motor vehicle to a complete stop. *State v. Webb*, 210 N.C. 350, 186 S.E. 241 (1936).

**Instruction on Reckless Driving Held Reversible Error.**—See *State v. Folger*, 211 N.C. 695, 191 S.E. 747 (1937).

In a manslaughter case based on reckless driving of defendant, an instruction on reckless driving which did not charge the jury to find that such reckless driving was the proximate cause of the wreck and resultant death of the deceased was erroneous. *State v. Mundy*, 243 N.C. 149, 90 S.E.2d 312 (1955).

An acquittal of reckless driving in the recorder's court will not bar a prosecution of manslaughter in the superior court arising out of the same occurrence, the two offenses differing both in grade and kind and not being the same in law or in fact, and the one not being a lesser degree of the other, and the recorder being without jurisdiction over the charge of manslaughter, but having bound defendant over to the superior court on that charge. *State v. Midgett*, 214 N.C. 107, 198 S.E. 613 (1938).

This and the following section constitute the hub of the motor traffic law around which all other provisions regulating the

operation of automobiles revolve. *Kolman v. Silbert*, 219 N.C. 134, 12 S.E.2d 915 (1941).

**Sufficiency of Warrant.** — A warrant charging that defendant “did unlawfully and willfully operate a motor vehicle on a State highway in a careless and reckless manner and without due regard for the rights and safety of others and their property in violation” of municipal ordinances and contrary to the form of the statute, is held sufficient to charge defendant with reckless driving under this section, since, although the warrant fails to follow the language of the statute in accordance with the better practice, it does charge facts sufficient to enable the court to proceed to judgment, and the charge of violating the municipal ordinances may be treated as surplusage. *State v. Wilson*, 218 N.C. 769, 12 S.E.2d 654 (1941).

Warrants under this section which charge the offense almost literally in the words of the statute are sufficient. *State v. Wallace*, 251 N.C. 378, 111 S.E.2d 714 (1959).

**Sufficiency of Evidence for Jury.** — The State’s evidence tending to show that defendant, driving 60 miles an hour, crashed into the rear of a car driven in the same direction on its right-hand side of the highway at 20 or 25 miles an hour, that the driver of the other car saw in his rearview mirror defendant approaching at an excessive speed but that defendant struck the car before its driver could get on the shoulders of the road, together with evidence showing that defendant’s car struck the other car with terrific force, is held sufficient to be submitted to the jury upon a warrant charging defendant with reckless driving under this section. *State v. Wilson*, 218 N.C. 769, 12 S.E.2d 654 (1941).

Allegation that defendant violated the provisions of this section, in that truck was operated carelessly and heedlessly in willful and wanton disregard of rights and safety of others, at a speed and in a manner to endanger or be likely to endanger person and property and by operating same to the left, when he could have turned to the right and passed without striking plaintiff’s testator, was not supported by evidence. *Tysinger v. Coble Dairy Prods.*, 225 N.C. 717, 36 S.E.2d 246 (1945).

Evidence held sufficient to be submitted to the jury on a charge of reckless driving in violation of this section. *State v. Holbrook*, 228 N.C. 620, 46 S.E.2d 843 (1948); *State v. Blankenship*, 229 N.C. 589, 50 S.E.2d 724 (1948); *State v. Call*, 236 N.C. 333, 72 S.E.2d 752 (1952).

Circumstantial evidence tending to identify defendant as the driver of the car

which was driven in a reckless manner, was held sufficient to be submitted to the jury. *State v. Dooley*, 232 N.C. 311, 59 S.E.2d 808 (1950).

Evidence held properly submitted to the jury on the charge of reckless driving. *State v. Sawyer*, 230 N.C. 713, 55 S.E.2d 464 (1949).

Evidence held insufficient to take the case to the jury on the charge of reckless driving. *State v. Roberson*, 240 N.C. 745, 83 S.E.2d 798 (1954).

When evidence tended to show that an ambulance on emergency duty, with its siren sounding at “peak” was traveling north along a four-lane street, and entered an intersection with another, more heavily traveled, four-lane street, against the red light, that a car traveling east and a cab traveling west along the intersecting street stopped, but that defendant’s bus, traveling west in the northern lane of the intersecting street with its view obstructed by the stationary cab, etc., proceeded into the intersection with the green light and struck the right side of the ambulance in the north-eastern part of the intersection, failed to show negligence on the part of the operator of the bus under this section or § 20-156. *McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, Inc.*, 248 N.C. 146, 102 S.E.2d 816 (1958).

From the evidence it was inferable that the defendant in rounding a curve failed to exercise due care to maintain a proper lookout and to keep his car under control, and that he was driving recklessly in violation of this section. The evidence was sufficient to carry the case to the jury on the issue of actionable negligence. *Tatem v. Tatem*, 245 N.C. 587, 96 S.E.2d 725 (1957).

Evidence tending to show that defendant driver saw approaching a truck with a red flashing light on its front and a fogging machine in the truck emitting chemical fog, which completely obscured the entire highway, that defendant driver slowed his vehicle but drove into the fog at a pretty good rate of speed and so continued on his right side of the highway until he was hit head-on by a truck traveling in the opposite direction, was sufficient to require the submission to the jury of the question whether defendant was operating his vehicle in violation of this section. *Moore v. Plymouth*, 249 N.C. 423, 106 S.E.2d 695 (1959).

The evidence tended to show that defendant was negligent in the operation of his automobile in driving it upon the highway without due caution and circumspection, and at a speed or in a manner so as to en-



danger or be likely to endanger any person or property in violation of this section. *Stockwell v. Brown*, 254 N.C. 662, 119 S.E.2d 795 (1961).

**Conviction Does Not Authorize Suspension of License.**—The offense of reckless driving in violation of this section is not an offense for which the Department of Motor Vehicles is authorized by § 20-16 to suspend an operator's license. *In re Bratton*, 263 N.C. 70, 138 S.E.2d 809 (1964).

**Nor Mandatory Revocation Thereof.**—The offense of reckless driving in violation of this section is not an offense for which, upon conviction, the revocation of an operator's license is mandatory under § 20-17. *In re Bratton*, 263 N.C. 70, 138 S.E.2d 809 (1964).

**In Prosecution for Manslaughter.**—Evidence that defendant was driving on the public highways of the State while under the influence of intoxicating liquor in violation of § 20-138, and was driving recklessly in violation of this section, which proximately caused the death of a passenger in his car, is sufficient to be submitted to the jury in a prosecution for manslaughter. *State v. Blankenship*, 229 N.C. 589, 50 S.E.2d 724 (1948).

**Evidence held sufficient to justify conviction of reckless driving.** *State v. Steelman*, 228 N.C. 634, 46 S.E.2d 845 (1948).

The State's evidence tending to show that defendant was driving some eighty to ninety miles per hour over a highway on which several other vehicles were moving at the time, is sufficient to overrule defendant's motion to nonsuit and sustain a conviction of reckless driving. *State v. Vanhoy*, 230 N.C. 162, 52 S.E.2d 278 (1949).

**The charge in a prosecution for reckless driving was held to be insubstantial compliance with the requirements of § 1-180.** *State v. Vanhoy*, 230 N.C. 162, 52 S.E.2d 278 (1949).

**Applied in** *State v. Flincham*, 228 N.C. 149, 44 S.E.2d 724 (1947); *State v. Williams*, 237 N.C. 435, 75 S.E.2d 301 (1953); *State v. McIntyre*, 238 N.C. 305, 77 S.E.2d 698 (1953); *State v. Turberville*, 239 N.C. 25, 79 S.E.2d 359 (1953); *State v. McRae*, 240 N.C. 334, 82 S.E.2d 67 (1954); *Redden v. Bynum*, 256 N.C. 351, 123 S.E.2d 734 (1962); *State v. Stroud*, 256 N.C. 458, 124 S.E.2d 136 (1962); *Benson v. Sawyer*, 257 N.C. 765, 127 S.E.2d 549 (1962); *Parker v.*

*Bruce*, 258 N.C. 341, 128 S.E.2d 561 (1962); *Queen v. Jarrett*, 258 N.C. 405, 128 S.E.2d 894 (1963); *Scott v. Darden*, 259 N.C. 167, 130 S.E.2d 42 (1963); *State v. Wells*, 259 N.C. 173, 130 S.E.2d 299 (1963); *Williams v. Tucker*, 259 N.C. 214, 130 S.E.2d 306 (1963); *Russell v. Hamlett*, 259 N.C. 273, 130 S.E.2d 395 (1963); *Faulk v. Althouse Chem. Co.*, 259 N.C. 395, 130 S.E.2d 684 (1963); *Jones v. C. B. Atkins Co.*, 259 N.C. 655, 131 S.E.2d 371 (1963); *Rundle v. Grubb Motor Lines, Inc.*, 300 F.2d 333 (4th Cir. 1962); *State v. Woolard*, 260 N.C. 133, 132 S.E.2d 364 (1963); *Scott v. Clark*, 261 N.C. 102, 134 S.E.2d 181 (1964); *Britt v. Mangum*, 261 N.C. 250, 134 S.E.2d 235 (1964); *Porter v. Pitt*, 261 N.C. 482, 135 S.E.2d 42 (1964); *Randall v. Rogers*, 262 N.C. 544, 138 S.E.2d 248 (1964); *Hall v. Little*, 262 N.C. 618, 138 S.E.2d 282 (1964); *Knight v. Seymour*, 263 N.C. 790, 140 S.E.2d 410 (1965); *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965); *Bongardt v. Frink*, 265 N.C. 130, 143 S.E.2d 286 (1965).

**Stated in** *Etheridge v. Etheridge*, 222 N.C. 616, 24 S.E.2d 477 (1943).

**Quoted in** *State v. Crews*, 214 N.C. 705, 200 S.E. 378 (1939); *Newbern v. Leary*, 215 N.C. 134, 1 S.E.2d 384 (1939); *State v. Wooten*, 228 N.C. 628, 46 S.E.2d 868 (1948).

**Cited in** *Hancock v. Wilson*, 211 N.C. 129, 189 S.E. 631 (1937); *Bechtler v. Bracken*, 218 N.C. 515, 11 S.E.2d 721 (1940); *Hoke v. Atlantic Greyhound Corp.*, 226 N.C. 692, 40 S.E.2d 345 (1946); *Singleton v. Nixon*, 239 N.C. 634, 80 S.E.2d 676 (1954); *State v. Bournais*, 240 N.C. 311, 82 S.E.2d 115 (1954); *Troxler v. Central Motor Lines, Inc.*, 240 N.C. 420, 82 S.E.2d 342 (1954); *Hennis Freight Lines, Inc. v. Burlington Mills Corp.*, 246 N.C. 143, 97 S.E.2d 850 (1957); *Rick v. Murphy*, 251 N.C. 162, 110 S.E.2d 815 (1959); *Hunt v. Crawford*, 253 N.C. 381, 117 S.E.2d 18 (1960); *Fleming v. Drye*, 253 N.C. 545, 117 S.E.2d 416 (1960); *Pridgen v. Uzzell*, 254 N.C. 292, 118 S.E.2d 755 (1961); *Gathings v. Sehorn*, 255 N.C. 503, 121 S.E.2d 873 (1961); *Pittman v. Swanson*, 255 N.C. 681, 122 S.E.2d 814 (1961); *Powell v. Clark*, 255 N.C. 707, 122 S.E.2d 706 (1961); *Mason v. Gillikin*, 256 N.C. 527, 124 S.E.2d 537 (1962); *Hall v. Poteat*, 257 N.C. 458, 125 S.E.2d 924 (1962); *Greene v. Meredith*, 264 N.C. 178, 141 S.E.2d 287 (1965).

**§ 20-140.1. Reckless driving upon driveways of public or private institutions, establishments providing parking space, etc.**—Any person who shall operate a motor vehicle over any drive, driveway, road, roadway, street or alley upon the grounds and premises of any public or private hospital, college, university, school, orphanage, church, or any of the institutions maintained and



supported by the State of North Carolina or any of its subdivisions, or upon the grounds and premises of any service station, drive-in theater, supermarket, store, restaurant or office building, or any other business or municipal establishment, providing parking space for customers, patrons or the public, carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving and upon conviction shall be punished by imprisonment not to exceed six months or by a fine not to exceed five hundred dollars (\$500.00) or by both such imprisonment and fine, in the discretion of the court. (1951, c. 182, s. 1; 1955, c. 917; 1957, c. 1368, s. 2.)

**Cross Reference.**—As to the provisions of this chapter being applicable to the streets, etc., on the campus of Appalachian State Teachers College, see § 116-46.1.

**Alleging Violation of § 20-140 Rather Than This Section.**—Where a complaint alleged reckless driving on a university campus as a violation of § 20-140, the fact that the complaint alleged a violation of § 20-140 instead of a violation of this section

was not fatal in the light of § 1-151, providing that pleadings shall be liberally construed, and in light of the theory of the trial court that campus roads were highways within the purview of § 20-140. *Rhyne v. Bailey*, 254 N.C. 467, 119 S.E.2d 385 (1961).

**Applied in** *State v. McIntyre*, 238 N.C. 305, 77 S.E.2d 698 (1953).

**§ 20-140.2. Overloaded or overcrowded vehicle.** — (a) No person shall operate upon a highway a motor vehicle which is so loaded or crowded with passengers or property, or both, as to obstruct the operator's view of the highway, including intersections, or so as to impair or restrict otherwise the proper operation of the vehicle.

(b) No person shall operate any motorcycle or motor scooter upon a highway when the number of persons upon such motorcycle or motor scooter, including the driver, shall be in excess of the number which it was designed by the manufacturer to carry.

(c) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided in § 20-176. (1953, c. 1233.)

**§ 20-141. Speed restrictions.**—(a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions then existing.

(b) Except as otherwise provided in this chapter, it shall be unlawful to operate a vehicle in excess of the following speeds:

- (1) Twenty miles per hour in any business district;
- (2) Thirty-five miles per hour in any residential district;
- (3) Forty-five miles per hour in places other than those named in subdivisions (1) and (2) of this subsection for:
  - a. All vehicles other than passenger cars, regular passenger vehicles, pick-up trucks of less than one-ton capacity, and school busses loaded with children; and
  - b. All vehicles, of whatever kind, which are engaged in towing, drawing, or pushing another vehicle: Provided, this subdivision shall not apply to vehicles engaged in towing, drawing, or pushing trailers with a gross weight of not more than three thousand (3000) pounds;
- (4) Fifty-five miles per hour in places other than those named in subdivisions (1) and (2) of this subsection for passenger cars, regular passenger carrying vehicles, and pick-up trucks of less than one-ton capacity.
- (5) Whenever the State Highway Commission shall determine upon the basis of an engineering and traffic investigation that a higher maxi-

imum speed than those set forth in subdivisions (1), (2), (3) and (4) of this subsection is reasonable and safe under the conditions found to exist upon any part of a highway outside the corporate limits of a municipality, or upon any part of a highway designated as a part of the interstate highway system or other controlled-access-facility highway either inside or outside the corporate limits of a municipality, with respect to the vehicles described in said subdivisions (3) and (4), said Commission shall determine and declare a reasonable and safe speed limit, not to exceed a maximum of 65 miles per hour, with respect to said part of any such highway, which maximum speed limit with respect to subdivisions (1), (2), (3) and (4) of this subsection shall be effective when appropriate signs giving notice thereof are erected upon the parts of the highway affected.

(b1) Except as otherwise provided in this chapter, and except while towing another vehicle, and except when an advisory safe speed sign indicates a slower speed, it shall be unlawful to operate a passenger vehicle or pick-up truck, rated for a capacity of not more than three-fourths ( $\frac{3}{4}$ ) ton, upon the interstate and primary highway system at less than the following speeds:

- (1) Forty (40) miles per hour in a fifty-five (55) mile-per-hour zone;
- (2) Forty-five (45) miles per hour in a sixty (60) mile-per-hour zone; and
- (3) Forty-five (45) miles per hour in a sixty-five mile-per-hour zone.

It shall be a specific duty of the State Highway Patrol and such Patrol is hereby directed to enforce the minimum speeds established hereby, when appropriate signs are posted indicating the minimum speed, provided that this mandate shall not be construed to divest other local, authorized law enforcement officers of authority to enforce the minimum speeds established hereby.

In all civil actions, violations of this subsection relating to minimum speeds shall not constitute negligence per se.

(c) The fact that the speed of a vehicle is lower than the foregoing limits shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway, and to avoid causing injury to any person or property either on or off the highway, in compliance with legal requirements and the duty of all persons to use due care.

(d) Whenever the State Highway Commission shall determine upon the basis of an engineering and traffic investigation that any speed hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist upon any part of a highway outside the corporate limits of a municipality or upon any part of a highway designated as a part of the interstate highway system or other controlled-access-facility highway either inside or outside the corporate limits of a municipality, said Commission shall determine and declare a reasonable and safe speed limit thereat, which shall be effective when appropriate signs giving notice thereof are erected at such place or part of the highway.

(e) The foregoing provisions of this section shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence upon the part of the defendant as the proximate cause of an accident: Provided, that the failure or inability of a motor vehicle operator who is operating such vehicle within the maximum speed limits prescribed by G.S. 20-141 (b) to stop such vehicle within the radius of the lights thereof or within the range of his vision shall not be considered negligence per se or contributory negligence per se in any civil action, but the facts relating thereto may be considered with other facts in such action in determining the negligence or contributory negligence of such operator.

(f) Repealed by Session Laws 1963, c. 949.

(f1) Local authorities in their respective jurisdictions may in their discretion fix by ordinance such speed limits as they may deem safe and proper on those streets which are not a part of the State highway system and which are not maintained by the State Highway Commission, but no speed limit so fixed for such streets shall be less than twenty-five miles per hour, and no such ordinance shall become or remain effective unless signs have been conspicuously placed giving notice of the speed limit for such streets. A violation of any ordinance adopted pursuant to the provisions of this subsection shall constitute a misdemeanor punishable by a fine not to exceed fifty dollars (\$50.00) or a prison sentence of not more than thirty days.

(g) Local authorities in their respective jurisdictions may, in their discretion, authorize by ordinance higher speeds than those stated in subsection (b) hereof upon streets which are not a part of the State highway system and which are not maintained by the State Highway Commission or portions thereof where there are no intersections or between widely spaced intersections: Provided, that signs are erected giving notice of the authorized speed.

Local authorities shall not have authority to modify or alter the basic rules set forth in subsection (a) herein, nor in any event to authorize by ordinance a speed in excess of fifty miles per hour.

(g1) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subdivisions (1), (2), and (3) of subsection (b) hereof is reasonable and safe under the conditions found to exist upon any part of a street or highway within the corporate limits of a municipality and which street or highway is a part of the State highway system, except those highways designated as a part of the interstate highway system or other controlled-access-facility highways, said local authorities shall determine and declare a safe and reasonable speed limit, not to exceed a maximum of fifty (50) miles per hour; provided, that the same shall not become effective until the State Highway Commission has passed a concurring ordinance adopting the speed limit so fixed by the local ordinance and, signs are erected giving notice of the authorized speed limit.

(g2) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that any speed hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist upon any part of a street or highway within the corporate limits of a municipality and which street or highway is a part of the State highway system, except those highways designated as a part of the interstate highway system or other controlled-access-facility highways, said local authority shall determine and declare a safe and reasonable speed limit; provided, that the same shall not become effective until the State Highway Commission has passed a concurring ordinance adopting the speed limit so fixed by the local ordinance and, signs are erected giving notice of the authorized speed limits; provided, further, however, that nothing in this subsection shall prohibit local authorities from setting lower speed limits in school zones under the authority of subsection (g3) hereof.

(g3) Whenever a municipal governing body determines upon the basis of an engineering and traffic investigation that any speed hereinbefore set forth is greater than reasonable or safe under the conditions found to exist upon any street or highway within its corporate limits which is a part of a State highway system, except those highways designated as a part of the interstate highway system or other controlled-access-facility highways, and is located in the vicinity of any public or private elementary or secondary school, it shall have authority to reduce by ordinance the speed limit upon such streets and highways abutting school property and for a distance not to exceed five hundred (500) feet on either side of such school property lines to a maximum speed of not less than twenty-five (25)



miles per hour, such speed limit to be effective only for thirty minutes prior to and thirty minutes following the times when such school begins and ends its daily schedule; provided, that in the event of a school having different beginning and ending schedules for different groups of pupils, such speed limit may be effective for thirty minutes prior to and thirty minutes following the time of each beginning schedule and each ending schedule; and provided, further, that no speed limit fixed under authority of this subsection shall be effective unless appropriate signs are erected giving notice of the authorized speed limit.

(h) No person shall operate a motor vehicle on the highway at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation because of mechanical failure or in compliance with law; provided, this provision shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(h1) Whenever the State Highway Commission or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway considerably impede the normal and reasonable movement of traffic, the Commission or such local authority may determine and declare a minimum speed below which no person shall operate a motor vehicle except when necessary for safe operation because of mechanical failure or in compliance with law. Such minimum speed limit shall be effective when appropriate signs giving notice thereof are erected on said part of the highway. Provided, such minimum speed limit shall be effective as to those highways and streets within the corporate limits of a municipality which are on the State highway system only when ordinances adopting the minimum speed limit are passed and concurred in by both the State Highway Commission and the local authorities. The provisions of this subsection shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(h2): Struck out by Session Laws 1961, c. 1147.

(i) The State Highway Commission shall have authority to designate and appropriately mark certain highways of the State as truck routes.

(j) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished as provided in § 20-180. (1937, c. 297, s. 2; c. 407, s. 103; 1939, c. 275; 1941, c. 347; c. 1067, s. 17; 1949, c. 947, s. 1; 1953, c. 1145; 1955, c. 398; c. 555, ss. 1, 2; c. 1042; 1957, c. 65, s. 11; c. 214; 1959, c. 640; c. 1264, s. 10; 1961, cc. 99, 1147; 1963, cc. 134, 456, 949.)

**Cross Reference.**—As to what is a “business district” within the meaning of subsection (b) of this section, see note to § 20-38.

**Editor’s Note.** — For comment on the 1941 amendment, see 19 N.C.L. Rev. 455; on the 1949 amendment, see 27 N.C.L. Rev. 473; on the 1953 amendment, see 31 N.C.L. Rev. 415 (1953).

The first 1963 amendment changed subdivision (5) of subsection (b) by substituting “65” for “60.” It also inserted subdivision (3) in subsection (b1). The second 1963 amendment substituted at the end of paragraph (3) b of subsection (b) the words “with a gross weight of not more than three thousand (3000) pounds” for the words “licensed for not more than twenty-five hundred (2500) pounds gross weight.” The third 1963 amendment made further changes in subdivision (5) of subsection (b). It also rewrote subsection (d), re-

pealed subsection (f), rewrote the portion of the first paragraph of subsection (g) preceding the proviso, added subsections (g1), (g2) and (g3), and inserted the proviso in subsection (h1).

Some of the cases cited below were decided under the corresponding provisions of the former law.

**Section Prescribes Lawful Speeds.**—This section prescribes speeds at which motor vehicles may be lawfully operated on the highways of the State. *Short v. Chapman*, 261 N.C. 674, 136 S.E.2d 40 (1964).

**Scope of Protection.**—This section does not limit its protection to motorists who are within the law; it enjoins all motorists “to avoid causing injury to any person or property either on or off the highway, in compliance with legal requirements and the duty of all persons to use due care. *McNair v. Goodwin*, 264 N.C. 146, 141 S.E.2d 22 (1965).

**Application of Section to Criminal Actions.** — See *Piner v. Richter*, 202 N.C. 573, 163 S.E. 561 (1932); *James v. Charlotte*, 183 N.C. 630, 112 S.E. 423 (1922).

**Violation as Constituting Negligence.** — It is negligence per se to drive an automobile upon a public highway at a speed greater than that permitted by statute, and where in an action to recover damages for the negligent killing of plaintiff's intestate, a voluntary passenger in the car thus driven, a motion as of nonsuit upon such evidence is properly denied. *Albritton v. Hill*, 190 N.C. 429, 130 S.E. 5 (1925).

If defendant approached the intersection at a speed in excess of 60 miles per hour, he violated this section and was thus guilty of negligence per se. *Jones v. Horton*, 264 N.C. 549, 142 S.E.2d 351 (1965).

If the automobile was driven at a speed greater than 55 miles per hour, or faster than was reasonable and prudent under existing conditions, the operator was negligent. *Rector v. Roberts*, 264 N.C. 324, 141 S.E.2d 482 (1965).

A motorist is required to act as a reasonably prudent man and to drive with due caution and circumspection and at a speed or in a manner so as not to endanger or be likely to endanger any person or property, and his failure to do so is negligence. *Crotts v. Overnite Transp. Co.*, 246 N.C. 420, 98 S.E.2d 502 (1957).

One who fails to comply with the provisions of this section is negligent. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

Evidence of greatly excessive speed in violation of the speed restrictions of this section, and of reckless driving in violation of § 20-140, were sufficient to make out a case of actionable negligence. *Bell v. Maxwell*, 246 N.C. 257, 98 S.E.2d 33 (1957); *Hutchens v. Southard*, 254 N.C. 428, 119 S.E.2d 205 (1961).

A violation of subsection (a) of this section, which is a safety statute, is negligence per se. *Black v. Gurley Milling Co.*, 257 N.C. 730, 127 S.E.2d 515 (1962).

All the evidence tended to show that plaintiff's decedent was killed by the actionable negligence of the driver of the automobile in which he was a passenger in driving it at an excessive speed in violation of subsection (b) (4) of this section, and in a reckless manner in violation of § 20-140. *Bridges v. Graham*, 246 N.C. 371, 98 S.E.2d 492 (1957).

A violation of subsection (b) (4) of this section is negligence per se. *Stegall v. Sledge*, 247 N.C. 718, 102 S.E.2d 115 (1958); *Rudd v. Stewart*, 255 N.C. 90, 120 S.E.2d 601 (1961).

Under subsections (a) and (c) of this section, it is unlawful for a person to operate a vehicle upon a public highway at a speed that is greater than is reasonable and prudent under existing circumstances. One who violates this statute is guilty of negligence. *Rouse v. Jones*, 254 N.C. 575, 119 S.E.2d 628 (1961).

Violation of subsections (a) and (b) of this section constitutes negligence, because according to the uniform decisions of the Supreme Court, the violation of a statute imposing a rule of conduct in the operation of a motor vehicle and enacted in the interest of safety has been held to constitute negligence per se, unless otherwise provided in the statute. *Bridges v. Jackson*, 255 N.C. 333, 121 S.E.2d 542 (1961).

Operation at a speed in excess of that lawfully prescribed is a negligent act. *Krider v. Martello*, 252 N.C. 474, 113 S.E.2d 924 (1960).

Proof of the breach of subsection (c) of this section is negligence. In essence, that is the meaning of "per se." *Hutchens v. Southard*, 254 N.C. 428, 119 S.E.2d 205 (1961).

Under subsections (a) and (c), if a person drives a vehicle on a highway at a speed greater than is reasonable and prudent under conditions then existing, such person is guilty of negligence per se, that is, as a matter of law, notwithstanding the speed does not exceed the applicable maximum limits set forth in subsection (b). *Cassetta v. Compton*, 256 N.C. 71, 123 S.E.2d 222 (1961).

Violation of subsections (a) and (c) of this section constituted negligence per se. *Rundle v. Grubb Motor Lines, Inc.*, 300 F.2d 333 (4th Cir. 1962).

A violation of subsection (c) is negligence per se. *Pittman v. Swanson*, 255 N.C. 681, 122 S.E.2d 814 (1961).

Failure to observe the statutory duty imposed by subsection (c) renders a motorist negligent, and such negligence may consist of traveling at excessive speed, failure to keep a proper lookout, or failure to maintain reasonable control of vehicle. *Redden v. Bynum*, 256 N.C. 351, 123 S.E.2d 734 (1962).

**Violation Must Proximately Cause Injury.**—As provided by subsection (e), a violation of subsections (a) and (c) has legal significance in a civil action only if it proximately causes injury. *Cassetta v. Compton*, 256 N.C. 71, 123 S.E.2d 222 (1961).

If the negligence resulting from failure to comply with the provisions of this section proximately causes injury, liability re-

sults. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

**Legislative Purpose.**—This section was enacted for the protection of persons and property and in the interest of public safety, and the preservation of human life. *State v. Norris*, 242 N.C. 47, 86 S.E.2d 916 (1955).

The statutory regulation of speed at intersections has for its purpose the protection of those who are in, entering or about to enter, the intersecting highway. *Hutchens v. Southard*, 254 N.C. 428, 119 S.E.2d 205 (1961).

The reckless driving and speed statutes are designed for the protection of life, limb and property. *State v. Ward*, 258 N.C. 330, 128 S.E.2d 673 (1962).

This section was enacted to promote safe operation of motor vehicles on the highways. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

This section prescribes a standard of care, "and the standard fixed by the legislature is absolute." *Kellogg v. Thomas*, 244 N.C. 722, 94 S.E.2d 903 (1956); *Alldridge v. Hasty*, 240 N.C. 353, 82 S.E.2d 331 (1954); *Lamm v. Gardner*, 250 N.C. 540, 108 S.E.2d 847 (1959); *Bondurant v. Mastin*, 252 N.C. 190, 113 S.E.2d 292 (1960); *Hutchens v. Southard*, 254 N.C. 428, 119 S.E.2d 205 (1961); *Pittman v. Swanson*, 255 N.C. 681, 122 S.E.2d 814 (1961).

**Regulation of Speed at Night.** — The motorist upon a public highway on a dark, misty and foggy night, is required to regulate the speed of his car with a view to his own safety according to the distance the light from his headlights is thrown in front of him upon the highway, and to observe the rule of the ordinary prudent man. *Weston v. Southern Ry.*, 194 N.C. 210, 139 S.E. 237 (1927). See also *Stewart v. Stewart*, 221 N.C. 147, 19 S.E.2d 242 (1942).

Curves on the road and darkness are conditions a motorist is required to take into consideration in regulating his speed "as may be necessary to avoid colliding with any person, vehicle, or other conveyance." He must operate his automobile at night in such manner and at such speed as will enable him to stop within the radius of his lights. *Allen v. Dr. Pepper Bottling Co.*, 223 N.C. 118, 25 S.E.2d 388 (1943).

A motorist must operate his automobile at night in such manner and at such speed as will enable him to stop within the radius of his lights. *Allen v. Dr. Pepper Bottling Co.*, 223 N.C. 118, 25 S.E.2d 388 (1943); *Wilson v. Central Motor Lines*, 230 N.C. 551, 54 S.E.2d 53 (1949).

One who operates a motor vehicle during the nighttime must take notice of the existing darkness which limits visibility to the distance his headlights throw their rays, and he must operate his motor vehicle in such manner and at such speed as will enable him to stop within the radius of his lights. *Cox v. Lee*, 230 N.C. 155, 52 S.E.2d 355 (1949).

While a motorist is under no duty to anticipate negligence on the part of others traveling the highway, it is his duty to anticipate the presence of others and hazards of the road, such as disabled vehicles, and, in the exercise of due care, to keep his automobile under such control as to be able to stop within the range of his lights. *Morris v. Jenrette Transp. Co.*, 235 N.C. 568, 70 S.E.2d 845 (1952).

Under the 1953 amendment, the failure of a motorist to stop his vehicle within the radius of its lights or the range of his vision may not be held negligence per se or contributory negligence per se, provided the motor vehicle is not being operated in excess of the maximum speed limit under the existing circumstances as prescribed by subsection (b). *Burchette v. Davis Distrib. Co.*, 243 N.C. 120, 90 S.E.2d 232 (1955); *Brooks v. Honeycutt*, 250 N.C. 179, 108 S.E.2d 457 (1959).

If a motorist is traveling within the legal speed limit, his inability to stop within the range of his headlights is not negligence per se but is only evidence of negligence to be considered with the other evidence in the case. *May v. Southern Ry.*, 259 N.C. 43, 129 S.E.2d 624 (1963).

The court committed prejudicial error in instructing the jury to the effect that a failure or inability of the defendant, who was driving the automobile within the maximum speed limit on the highway, to stop the automobile within the radius of his lights, would constitute a breach of legal duty and would be negligence per se. *Salter v. Lovick*, 257 N.C. 619, 127 S.E.2d 273 (1962).

**Colliding with Vehicle Parked on Highway at Night without Signals.**—The driver of a car is not required to anticipate that vehicles will be parked on the highway at night without the warning signals required by statute, but this does not relieve him of the duty to keep a proper lookout and not to exceed a speed at which he can stop within the radius of his lights, taking into consideration the darkness and atmospheric conditions. *Wilson v. Central Motor Lines*, 230 N.C. 551, 54 S.E.2d 53 (1949). See § 20-161 (a).

Where plaintiff's own evidence discloses that his lights and brakes were in good



condition, that he was driving with his lights full on at 35 miles per hour, that he could see 150 feet ahead despite the darkness and heavy fog, and that he failed to see any obstruction and hit the rear of a truck parked on the highway in his lane of traffic without lights or warning flares, the evidence discloses contributory negligence on his part as a matter of law. *Wilson v. Central Motor Lines*, 230 N.C. 551, 54 S.E.2d 53 (1949).

Allegations held not to show contributory negligence as a matter of law in colliding with truck stopped on highway after dark, without rear lights. *Weavil v. Myers*, 243 N.C. 386, 90 S.E.2d 733 (1956).

Plaintiff will not be held contributorily negligent as a matter of law in striking the rear of a vehicle left unattended on a highway at nighttime without lights, when plaintiff at the time is traveling within the statutory maximum speed limit. *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

Motorist who is driving his automobile within the maximum speed limit cannot be held contributorily negligent as a matter of law in outrunning his headlights and striking the rear end of a pickup truck stopped on the highway without lights. *Rouse v. Peterson*, 261 N.C. 600, 135 S.E.2d 549 (1964).

Where a motorist is traveling within the maximum legal speed, he will not be held contributorily negligent as a matter of law in colliding with the rear of a vehicle left in his lane of traffic at nighttime without lights. *Dezern v. Asheboro City Bd. of Educ.*, 260 N.C. 535, 133 S.E.2d 204 (1963).

**Section 20-145 exempts a police officer from observing the speed limit set out in this section** when such officer is operating an automobile in the chase or apprehension of a violator of the law, or persons charged or suspected of such violation, as long as the officer drives with due regard to the safety of others. *Goddard v. Williams*, 251 N.C. 128, 110 S.E.2d 820 (1959).

**Right to Assume That Other Driver Will Observe Law.**—The operator of an automobile traveling upon an intersecting highway traversing a designated main traveled or through highway, is under no duty to anticipate that the operator of an automobile, upon such designated highway, approaching the intersection of the two highways, will fail to observe the speed regulations and the rules of the road. *Hawes v. Atlantic Ref. Co.*, 236 N.C. 643, 74 S.E.2d 17 (1953).

Under this section 55 miles per hour is the general maximum speed limit in the

State, and the provisions of subdivision (5) of subsection (b) are in the nature of an exception, and a defendant must bring himself within the provisions of the exception in order to receive the benefits of the exception. *State v. Brown*, 250 N.C. 209, 108 S.E.2d 233 (1959); *Shue v. Scheidt*, 252 N.C. 561, 114 S.E.2d 237 (1960).

**Contributory Negligence at Crossing.**—Failure of a driver to keep his car under such control as will enable him to observe the restrictions imposed by this section as to grade crossings is contributory negligence sufficient to bar recovery against the railroad. *Hinnant v. Atlantic Coast Line R.R.*, 202 N.C. 489, 163 S.E. 555 (1932).

**Passing Animals.**—See *Tudor v. Bowen*, 152 N.C. 441, 67 S.E. 1015 (1910); *Gaskins v. Hancock*, 156 N.C. 56, 72 S.E. 80 (1911); *Curry v. Fleer*, 157 N.C. 16, 72 S.E. 626 (1911).

**Intersecting Streets.**—The word “intersecting” has been construed as synonymous with “joining” or “touching” or “entering into.” *Manly v. Abernathy*, 167 N.C. 220, 83 S.E. 343 (1914); *Fowler v. Underwood*, 193 N.C. 402, 137 S.E. 155 (1927).

The words “intersecting highways” include all space made by the junction of frequented streets of a town, though one of the streets enters the other without crossing or going beyond it. *Manly v. Abernathy*, 167 N.C. 220, 83 S.E. 343 (1914).

**Same — Effect of Exercising Judgment Where Speed Exceeded.** — Where one recklessly drives an automobile without signal or warning, in excess of the speed limit fixed by ordinance and the general statute, and thereby injures or kills another at a street intersection of the town, his violating the law in this manner makes him criminally liable for the injury without regard to the exercise of his judgment at the time in endeavoring to avoid the injury or contributory negligence on the part of the one injured or killed. *State v. McIver*, 175 N.C. 761, 94 S.E. 682 (1917).

**Same—Criminal Liability.** — A reckless approach and traverse of an intersection may render one criminally liable for the consequences of his acts in addition to liability under this section. *State v. Gash*, 177 N.C. 595, 99 S.E. 337 (1919).

**Same—Application to Railroads.** — The prior law, similar in phraseology to this section, was held to include railroads within its provisions, and it was therefore a misdemeanor to run an automobile at a greater speed than permitted at intersec-

tions while approaching a railroad crossing in a town. *Hinton v. Southern Ry.*, 172 N.C. 587, 90 S.E. 756 (1916).

**Same—Effect of Violation upon Recovery from Railroad.** — The mere fact that the speed of an automobile exceeded that allowed by law, at the time of collision with a railroad train at a public crossing, does not of itself prevent a recovery by the owner, where there is evidence of negligence on the part of the railroad, because it would, among other things, withdraw the question of proximate cause from the jury. *Shepard v. Norfolk Southern R.R.*, 169 N.C. 239, 84 S.E. 277 (1915).

**Same—Purpose of Regulation.** — Statutory regulation of speed at intersections has for its purpose the protection of those who are in, entering, or about to enter, the intersecting highway. *Etheridge v. Etheridge*, 222 N.C. 616, 24 S.E.2d 477 (1943); *Hutchens v. Southard*, 254 N.C. 428, 119 S.E.2d 205 (1961).

**Same — Failure to Slacken Speed or Give Signal.**—Plaintiffs' evidence tending to show that defendant's tractor with trailer was being driven at a speed of 35 miles per hour and entered an intersection with another highway without slackening speed or giving signal warning, and collided with the truck in which plaintiffs' intestates were riding, which had already entered the intersection, is sufficient to overrule defendant's motions as of nonsuit on the issue of negligence, notwithstanding that defendant's vehicle was being operated upon the dominant highway. *Nichols v. Goldston*, 228 N.C. 514, 46 S.E.2d 320 (1948).

**Application to Approach from Private Drive.**—In approaching a highway from a yard the driver of an automobile must have his car under control, and not exceed a speed of 10 miles an hour, and also give timely signals of its approach, and evidence of his failure to do so causing an accident to another car being properly driven on the highway, is sufficient actionable negligence to take the case to the jury; and the fact that this negligence did not actually result in a collision of the two cars, but proximately caused the injury in the reasonable effort of the driver of the plaintiff's car to avoid it, does not vary the application of the rule. *Fowler v. Underwood*, 193 N.C. 402, 137 S.E. 155 (1927), decided under former law.

**Care as to Children.**—The law requires more than ordinary care in regard to children. *Moore v. Powell*, 205 N.C. 636, 172 S.E. 327 (1934).

Evidence that a child less than five

years old was on the hard surface of a highway, unattended, and clearly visible to defendant while he traveled a distance of one-half mile, that the child ran across the highway toward her companion, another small child, when defendant was only some 40 feet away, and that defendant could not then avoid striking the child, notwithstanding he had reduced his speed from some 45 miles per hour to 25 miles per hour, was sufficient to be submitted to the jury. *Henderson v. Locklear*, 260 N.C. 582, 133 S.E.2d 164 (1963).

**This section states several offenses each of which is a separate crime independently of the others.** *State v. Mills*, 181 N.C. 530, 106 S.E. 677 (1921). See also *State v. Rountree*, 181 N.C. 535, 106 S.E. 669 (1921).

**Limitation upon Privilege of Driving at Maximum Rate.** — The speed limit prescribed by statute at which an automobile driver may go at various places does not alone excuse those who drive within that specified by the statute, and it is likewise required that they use proper care where other conditions require it within the limitations given. *State v. Whaley*, 191 N.C. 387, 132 S.E. 6 (1926).

Motorist may not lawfully drive at speed which is not reasonable and prudent under the circumstances notwithstanding that the speed is less than limit set by this section. *Kolman v. Silbert*, 219 N.C. 134, 12 S.E.2d 915 (1941).

The trial court's instruction correctly defining "residential district" and charging that the lawful speed therein was 25 miles [now 35 miles] an hour, but that this limitation did not relieve the driver from further reducing his speed if made necessary by special hazards in order to avoid colliding with any person or vehicle, is without error, the question whether the scene of the accident was in a "residential district" as defined by statute and the conflicting evidence as to the speed of the bus being left to the determination of the jury. *Reid v. City Coach Co.*, 215 N.C. 469, 2 S.E.2d 578, 123 A.L.R. 140 (1939).

The driver of an automobile upon a through highway did not have the right to assume absolutely that a driver approaching the intersection along a servient highway would obey the stop sign before entering or crossing the through highway, c. 148, Public Laws 1927, s. 21, but was required to keep a proper lookout and to keep his car at a reasonable speed under the circumstances in order to avoid injury to life or limb, s. 4 of the 1927 act, and the driver of the car along the through high-



way forfeited his right to rely upon the assumption that the other driver would stop before entering or crossing the intersection when he approached and attempted to traverse it himself at an unlawful or excessive speed, and even when his speed was lawful he remained under duty to exercise due care to ascertain if the driver of the other car was going to violate the statutory requirement in order to avoid the consequences of such negligence, it being necessary to construe the pertinent statutes in *pari materia* and this result being consonant with such construction. *Groome v. Davis*, 215 N.C. 510, 2 S.E.2d 771 (1939).

By provision of this section, speed in excess of that which is reasonable and prudent under the circumstances when special hazards exist by reason of traffic, weather or highway conditions, is unlawful notwithstanding that the speed may be less than the *prima facie* limits prescribed. *Hoke v. Atlantic Greyhound Corp.*, 226 N.C. 692, 40 S.E.2d 345 (1946).

The fact that a vehicle is being driven within the statutory speed limit does not render the speed lawful when by reason of special hazards the speed is greater than is reasonable and prudent under the existing conditions. *Rollison v. Hicks*, 233 N.C. 99, 63 S.E.2d 190 (1951).

The speed of a motor vehicle may be unlawful under the circumstances of a particular case, even though such speed is less than the definite statutory limit prescribed for the vehicle in the place where it is being driven. *Sowers v. Marley*, 235 N.C. 607, 70 S.E.2d 670 (1952); *Wise v. Lodge*, 247 N.C. 250, 100 S.E.2d 677 (1957); *Lamm v. Gardner*, 250 N.C. 540, 108 S.E.2d 847 (1959).

Any speed may be unlawful and excessive if the operator of a motor vehicle knows or by the exercise of due care should reasonably anticipate that a person or vehicle is standing in his line of travel. *Murray v. Wyatt*, 245 N.C. 123, 95 S.E.2d 541 (1956).

It is unlawful to drive at any time on a State highway at a speed greater than is reasonable and prudent under the conditions then existing or in any event at a higher rate of speed of than 55 miles per hour. *State v. Norris*, 242 N.C. 47, 86 S.E.2d 916 (1955), decided prior to 1957 amendment which added the exception provided by subdivision (5) of subsection (b).

In light of the provisions of § 20-140 and this section it is clear that whether or not a speed of 55 miles an hour is lawful depends upon the circumstances at the time. These sections provide that a mo-

torist must at all times drive with due caution and circumspection and at a speed and in a manner so as not to endanger or be likely to endanger any person or property. At no time may a motorist lawfully drive at a speed greater than is reasonable and prudent under the conditions then existing. *Primm v. King*, 249 N.C. 228, 106 S.E.2d 223 (1958).

The fact that the speed of defendant's automobile was 50 miles an hour did not relieve her from the duty to decrease speed when approaching and crossing an intersection as required by subsection (c) of this section. *Hutchens v. Southard*, 254 N.C. 428, 119 S.E.2d 205 (1961).

**Motorist Must Decrease Speed When Special Hazards Exist.** — A speed greater than is reasonable and prudent under the conditions then existing is prohibited by this section, and the duty is imposed upon the driver to decrease the speed of his automobile when special hazard exists with respect to pedestrians or other traffic. *Baker v. Perrott*, 228 N.C. 558, 46 S.E.2d 461 (1948). See *Williams v. Henderson*, 230 N.C. 707, 55 S.E.2d 462 (1949); *Riggs v. Akers Motor Lines*, 233 N.C. 160, 63 S.E.2d 197 (1951).

The driver of an automobile is required at all times to operate his vehicle with due regard to traffic and conditions of the highway, and keep his car under control and decrease speed when special hazards exist by reason of weather or highway conditions or when necessary to avoid colliding with any other vehicle. This requirement, as expressed in this section and § 20-140, constitutes the hub of the motor vehicle law around which other provisions regulating the operation of motor vehicles revolve. *Cox v. Lee*, 230 N.C. 155, 52 S.E.2d 355 (1949); *Singletary v. Nixon*, 239 N.C. 634, 80 S.E.2d 676 (1954); *Lamm v. Gardner*, 250 N.C. 540, 108 S.E.2d 847 (1959).

A motorist is under statutory duty to decrease speed when special hazard exists by reason of weather and highway conditions, to the end that others using the highway may not be injured. *Williams v. Tucker*, 259 N.C. 214, 130 S.E.2d 306 (1963).

The fact that the speed of a vehicle is lower than that fixed by statute does not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, or when a hazard exists with respect to weather or highway conditions, and speed shall be reduced as may be necessary to avoid colliding with any vehicle on the highway. *Keller v.*



Security Mills of Greensboro, Inc., 260 N.C. 571, 133 S.E.2d 222 (1963).

When the condition of a road is such that skidding may be reasonably anticipated, the driver of a vehicle must exercise care commensurate with the danger to keep the vehicle under control so as to avoid injury to occupants of the vehicle and others on or off the highway. *Webb v. Clark*, 264 N.C. 474, 141 S.E.2d 880 (1965).

**And in Extreme Cases Must Stop.**—It has been held in extreme cases that where by reason of fog or other conditions visibility is practically nonexistent, motorists are under duty to refrain from entering the highway or to stop if already on the highway. *Williams v. Tucker*, 259 N.C. 214, 130 S.E.2d 306 (1963).

**A motorist should exercise reasonable care in keeping a lookout commensurate with the increased danger occasioned by conditions obscuring his view.** *Williams v. Tucker*, 259 N.C. 214, 130 S.E.2d 306 (1963).

**Speed When Driver Sees Person or Vehicle in His Line of Travel.**—Any speed may be unlawful if the driver of a motor vehicle sees, or in the exercise of due care could and should have seen, a person or vehicle in his line of travel. *Cassetta v. Compton*, 256 N.C. 71, 123 S.E.2d 222 (1961).

**Speed Less than 20 Miles Per Hour May Be Unlawful.**—Speed less than 20 miles per hour, either in a business district, residential district or elsewhere, if greater than is reasonable and prudent under the conditions then existing is unlawful and negligence per se. *Hinson v. Dawson*, 241 N.C. 714, 86 S.E.2d 585 (1955).

**Speed of 40 miles per hour on a highway on which snow is beginning to stick may be excessive.** *Fox v. Hollar*, 257 N.C. 65, 125 S.E.2d 334 (1962).

**Speed of 35 to 40 miles per hour on a highway covered with ice and snow may be excessive; the driver of the vehicle under such conditions must exercise care commensurate with the danger, so as to keep his vehicle under control.** *Redden v. Bynum*, 256 N.C. 351, 123 S.E.2d 734 (1962).

**Inability to Stop within Radius of Lights.**—When a motorist is traveling within the maximum speed limit, his inability to stop his vehicle within the radius of his headlights will not be held negligence or contributory negligence per se. *Short v. Chapman*, 261 N.C. 674, 136 S.E.2d 40 (1964).

If the driver of a motor vehicle who is

operating it within the maximum speed limits prescribed by subsection (b) of this section fails to stop such vehicle within the radius of the lights of the vehicle or within the range of his vision, the courts may no longer hold such failure to be negligence per se, or contributory negligence per se, as the case may be, that is, negligence or contributory negligence, in and of itself; but the facts relating thereto may be considered by the jury, with other facts in such action, in determining whether the operator be guilty of negligence, or contributory negligence, as the case may be. *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

**Or within Range of Vision.**—Plaintiff's inability to stop within the range of his vision was held not to be contributory negligence per se, but the facts relating thereto were held for consideration by the jury in determining the issue of contributory negligence. *Brown v. Hale*, 263 N.C. 176, 139 S.E.2d 210 (1964).

**Sudden Emergency.**—The duty of the nocturnal motorist to exercise ordinary care for his own safety does not extend so far as to require that he must be able to bring his automobile to an immediate stop on the sudden arising of a dangerous situation which he could not reasonably have anticipated. *Rouse v. Peterson*, 261 N.C. 600, 135 S.E.2d 549 (1964).

**Curves and hills in the road are conditions a motorist is required to take into consideration in regulating his speed "as may be necessary to avoid colliding with any person, vehicle, or other conveyance."** *Tyson v. Ford*, 228 N.C. 778, 47 S.E.2d 251 (1948).

**When Negligence Not Imputed to Passenger.**—The negligent driving of the owner of the car or his agent is not attributable to a passenger therein who has no authority over him or control over the car or the manner in which it was being driven at the time his injury was caused, the subject of his action for damages, nor will the principles of law applicable to those engaged in a common purpose apply from the fact that the injured party and the driver of the car were riding together to the same destination. *Albritton v. Hill*, 190 N.C. 429, 130 S.E. 5 (1925).

**Necessity for Criminal Negligence.**—Under an indictment with three counts: Assault with a deadly weapon, an automobile; operating a motor vehicle on a public highway while under the influence of intoxicating liquor; and recklessly, and in breach of this section, wherein it was admitted by the State that there was no evi-

dence of intentional assault, and the jury having returned for their verdict that defendant "was guilty of an assault, but not with reckless driving," the admission and the verdict on the last two counts dispelled the element of criminal negligence and criminal intent, and a conviction on the first count will not be sustained. *State v. Rawlings*, 191 N.C. 265, 131 S.E. 632 (1926). See also *State v. Rountree*, 181 N.C. 535, 106 S.E. 669 (1921).

**When Violation Amounts to Manslaughter.** — Where one drives his automobile in violation of the statutory requirements, and thus directly, or without an independent intervening sole proximate cause, the death of another results, he is guilty of manslaughter, though the death was unintentionally caused by his act. But the violation also is insufficient unless it was the proximate cause of the death, and a charge disregarding the element of proximate cause is error. *State v. Whaley*, 191 N.C. 387, 132 S.E. 6 (1926).

**Ordinance Held in Conflict.** — Where one is permitted by the State law to enter upon and go across an intersecting highway at a speed not exceeding 10 miles an hour unless due regard to the traffic or to the safety of the public requires a reduction of the speed, but the ordinance in question deprives him of this right by prescribing an arbitrary rule that he shall always and under all circumstances stop his vehicle before entering certain streets, the ordinance is inconsistent with the statute and therefore not enforceable. *State v. Stallings*, 189 N.C. 104, 126 S.E. 187 (1925).

**Circumstantial Evidence May Be Sufficient.** — Though the evidence on the part of plaintiff is not direct, but circumstantial, yet it may be sufficient evidence to be submitted to the jury that defendant was exceeding the speed limit contrary to the law of this section. *Jones v. Bagwell*, 207 N.C. 378, 177 S.E. 170 (1934).

**Proximate Cause Is for Jury.** — Where there is evidence that defendant was driving his automobile on the highway at a speed of 65 miles per hour and that the injury in suit was proximately caused by such excessive speed, it is sufficient to be submitted to the jury on the issue of actionable negligence. *Norfleet v. Hall*, 204 N.C. 573, 169 S.E. 143 (1933).

Whether a violation of the provisions of this section is the proximate cause of an injury is for the jury to determine. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

**Burden of Showing Proximate Cause.** — Plaintiff in a civil action has the burden of showing that excessive speed, when relied upon by him, was a proximate cause of injury. *Hoke v. Atlantic Greyhound Corp.*, 226 N.C. 692, 40 S.E.2d 345 (1946).

**Proof of Residential District or Section.** — Where there is no definite evidence as to the number of residences at the scene of the action so as to bring the place within the definition of "residential section," as provided by this section, or "residential district," as set out in § 20-38, and no evidence that the speed of the car was a proximate cause of the accident in suit, the evidence is insufficient to be submitted to the jury on the question of defendant's negligence in exceeding the speed limit prescribed in residential districts, there being no evidence that defendant exceeded the speed limit prescribed for highway travel generally. *Fox v. Barlow*, 206 N.C. 66, 173 S.E. 43 (1934).

Where the evidence established that the scene of the accident was not in a business district, and there was no evidence that defendants' vehicle was being driven in excess of 20 miles an hour, whether the accident occurred in a residential district was immaterial, since such speed did not violate this section. *Mitchell v. Melts*, 220 N.C. 793, 18 S.E.2d 406 (1942).

**Sufficient Evidence to Overrule Defendant's Motion to Nonsuit in Prosecution for Manslaughter.** — Evidence that the defendant was driving his car at a speed of from 50 to 55 miles per hour, on or near the center of the highway, when he collided with another car, resulting in the death of the driver thereof, was held sufficient to overrule defendant's motion to nonsuit in a prosecution for manslaughter, although defendant introduced evidence in sharp conflict. *State v. Webber*, 210 N.C. 137, 185 S.E. 659 (1936).

The State's evidence tending to show that defendant was driving some 80 to 90 miles per hour over a highway whereon several other vehicles were moving at the time, is sufficient to overrule defendant's motion to nonsuit and sustain a conviction of reckless driving under § 20-140, and driving at a speed in excess of 55 miles per hour in violation of this section. *State v. Vanhoy*, 230 N.C. 162, 52 S.E.2d 278 (1949).

**Instruction failing to charge provisions of this section, in civil action, held error.** *Barnes v. Teer*, 219 N.C. 823, 15 S.E.2d 379 (1941).

**Mere Reading of Section Held Insufficient.** — The mere reading of the statutory

speed regulations laid down in this section, without separating the irrelevant provisions from those pertinent to the evidence and without application of the relevant provisions of the evidence adduced, is insufficient to meet the requirements of § 1-180. *Lewis v. Watson*, 229 N.C. 20, 47 S.E.2d 484 (1948).

**Necessity of Referring to Subsection (c).**—So material is the application of subsection (c) to questions of liability arising out of violation of statutory speed regulations where special hazards or unusual circumstances are shown that in *Kolman v. Silbert*, 219 N.C. 134, 12 S.E.2d 915 (1941), it was held error that the trial court in that case charged the jury as to the speed limits fixed by this section without calling attention to the subsection above referred to. *Garvey v. Atlantic Greyhound Corp.*, 228 N.C. 166, 45 S.E.2d 58 (1947).

Where the trial court instructed the jury that the evidence was insufficient to show that the area where the collision occurred was a residential district and therefore the maximum allowable speed was 55 miles per hour, it was held on appeal that defendant was entitled to have the jury instructed as to provisions of subsection (c) of this section. *Medlin v. Spurrier & Co.*, 239 N.C. 48, 79 S.E.2d 209 (1953).

Where the court in its charge quoted almost verbatim the provisions of subsection (a), but neither charged nor explained in form or substance, nor made any reference to, the provisions of subsection (c) in any part of the charge, this affected a substantive right of plaintiff, and was prejudicial error, even in the absence of a special request for instructions. *Pittman v. Swanson*, 255 N.C. 681, 122 S.E.2d 814 (1961).

**What is the speed limit is a mixed question of fact and law**, except where the State Highway Commission or local authorities, pursuant to the statute, have determined a reasonable and safe speed for a particular area and have declared it by erecting appropriate signs. *Hensley v. Wallen*, 257 N.C. 675, 127 S.E.2d 277 (1962).

**Maximum Legal Speed Determined by Nature of Area.**—What is the maximum speed permitted by law for a given area depends upon whether that area is a business or residential district as defined by § 20-38 (1) and (27), or "places other than those," as mentioned in § 20-141 (b) (4). *Hensley v. Wallen*, 257 N.C. 675, 127 S.E.2d 277 (1962).

**Which Must Be Proved before Speed Limit Can Be Determined.**—In the ab-

sence of a stipulation, it is necessary to prove the character of the district before the maximum speed permitted by law can be determined. *Hensley v. Wallen*, 257 N.C. 675, 127 S.E.2d 277 (1962).

**Failure to Allege Character of District Where Accident Occurred.**—Where plaintiff alleged that defendant was operating his automobile at a speed which was excessive under the existing conditions in violation of subsection (a), and made no other allegation with reference to defendant's speed, and did not allege that the approach to the scene of the collision was either a business or a residential district or that the proper authorities had posted any signs giving notice of any determined speed limit for the area, subsections (a) and (b) (4) were pertinent in judging the conduct of the defendant. *Hensley v. Wallen*, 257 N.C. 675, 127 S.E.2d 277 (1962).

A "business district" is determinable with reference to the status of the frontage on the street or highway on which the motorist is traveling. Conditions along intersecting streets or highways are excluded from consideration. *Black v. Penland*, 255 N.C. 691, 122 S.E.2d 504 (1961).

**Judging Speed by Movement of Lights.**—At night, a witness may judge the speed of an automobile by the movement of its lights, if his observation is for such a distance as to enable him to form an intelligent opinion. *Jones v. Horton*, 264 N.C. 549, 142 S.E.2d 351 (1965).

The physical facts at the scene of an accident may disclose that the operator of the vehicle was traveling at excessive speed. *Keller v. Security Mills of Greensboro, Inc.*, 260 N.C. 571, 133 S.E.2d 222 (1963).

**Competency of Witnesses.**—It is the rule in this State that any person of ordinary intelligence who has had a reasonable opportunity to observe is competent to testify as to the rate of speed of an automobile. *Jones v. Horton*, 264 N.C. 549, 142 S.E.2d 351 (1965).

**Opinion Testimony.**—Plaintiff's opinion testimony that the defendant's vehicle was traveling "in excess of 60 miles per hour, between 75-80 miles per hour" was competent. Its weight and credibility were for the jury. *Jones v. Horton*, 264 N.C. 549, 142 S.E.2d 351 (1965).

**Testimony of Witness as to Speed Limit in Particular Area Violates Opinion Rule.**—To permit a witness to say what a speed limit was for a particular area at a given time is to allow him to give his inferences from facts which he has observed. Such testimony violates the opinion rule and invades the province of the jury. *Hen-*



sley v. Wallen, 257 N.C. 675, 127 S.E.2d 277 (1962).

**But Witness May Testify as to Presence of Highway Sign.**—If a highway sign declaring the speed limit to be a given speed has been posted, it would be competent for a witness to say so, describe the sign, and testify as to its location. Hensley v. Wallen, 257 N.C. 675, 127 S.E.2d 277 (1962).

**And Inference Is That Highway Sign Was Erected by Proper Authorities.**—When a sign is present, nothing else appearing, there is a logical inference that it was erected by the proper authorities pursuant to this section. Hensley v. Wallen, 257 N.C. 675, 127 S.E.2d 277 (1962).

**The authority of the State Highway Commission under subsection (d) of this section does not stop at city limits, but extends to all State highways maintained by it, regardless of whether such highways are within the corporate limits of a city or town.** Davis v. Jessup, 257 N.C. 215, 125 S.E.2d 440 (1962).

**Warrant held sufficient to charge violation of this section by speeding 80 miles per hour.** State v. Daughtry, 236 N.C. 316, 72 S.E.2d 658 (1952).

**Charge Held Sufficient.**—The charge, in a prosecution for reckless driving and driving at an excessive speed, both as to the statement of the evidence and the law arising on the essential features of the evidence, was held to be in substantial compliance with the requirements of § 1-180. State v. Vanhoy, 230 N.C. 162, 52 S.E.2d 278 (1949).

**Evidence Sufficient to Show Violation of Subsection (a).**—See Register v. Gibbs, 233 N.C. 456, 64 S.E.2d 280 (1951).

**Speed in excess of statutory limits is prima facie evidence of negligence.** Morris v. Johnson, 214 N.C. 402, 199 S.E. 390 (1938). And an instruction that such speed constitutes negligence per se is reversible error. Latham v. Elizabeth City Orange Crush Bottling Co., 213 N.C. 158, 195 S.E. 372 (1938).

A speed in excess of the statutory restrictions is prima facie evidence that the speed is not reasonable or prudent and that it is unlawful, but it does not establish that the speed is unlawful as a matter of law, and is not prima facie proof of proximate cause, and does not make out a prima facie case, and an instruction that such speed constituted prima facie evidence of negligence and if the jury should so find they should answer the issue of negligence in the affirmative, is erroneous. Woods v. Freeman, 213 N.C. 314, 195

S.E. 812 (1938). See Fleeman v. Citizens Transfer & Coal Co., 214 N.C. 117, 198 S.E. 596 (1938).

An instruction that the jury might find, but were not required to find, that a speed in excess of 45 miles an hour was unlawful, but that if they should find such speed was unlawful it would constitute negligence per se, is held not prejudicial under the evidence in this case tending to show special hazards in that defendant was driving into a curve on wet pavement with worn, slick tires, at a speed in excess of 45 miles per hour. York v. York, 212 N.C. 695, 194 S.E. 486 (1938).

An instruction that the violation of statutes regulating the operation of motor vehicles and the conduct of pedestrians on the highway would constitute negligence per se, and would be actionable if the proximate cause of injury, is held without error when it appears that the instruction was applied solely to §§ 20-146 and 20-174 prescribing that vehicles should be operated on the right-hand side of the highway and that warning should be given pedestrians, there being no reference in the charge to a violation of speed restrictions which this section makes merely prima facie evidence that the speed is unlawful. Williams v. Woodward, 218 N.C. 305, 10 S.E.2d 913 (1940).

As to violation of statutory speed limit as constituting negligence per se, see Norfleet v. Hall, 204 N.C. 573, 169 S.E. 143 (1933); James v. Carolina Coach Co., 207 N.C. 742, 178 S.E. 607 (1935); Exum v. Baumrind, 210 N.C. 650, 188 S.E. 200 (1936). As to evidence establishing negligence per se but not wanton negligence, see Turner v. Lipe, 210 N.C. 627, 188 S.E. 108 (1936). See also Smart v. Rodgers, 217 N.C. 560, 8 S.E.2d 833 (1940).

The driving of an automobile upon a highway at a speed in excess of 45 miles per hour is not negligence per se or as a matter of law, but only prima facie evidence that the speed is unlawful under the provisions of this section. State v. Webber, 210 N.C. 137, 185 S.E. 659 (1936), decided before the 1947 amendment, which increased the maximum speed for passenger cars from 45 to 55 miles per hour, citing State v. Spencer, 209 N.C. 827, 184 S.E. 835 (1936).

**Evidence of Excessive Speed Is Not Prima Facie Evidence of Proximate Cause.**—Speed in excess of 21 miles per hour in a business district is prima facie evidence that the speed is excessive and unlawful, but such evidence is not prima facie proof of proximate cause, but is merely evidence

to be considered with other evidence in determining actionable negligence. *Templeton v. Kelley*, 215 N.C. 577, 2 S.E.2d 696 (1939).

The mere fact that it can be reasonably inferred from the evidence that an automobile was traveling at a very rapid speed when it wrecked is not sufficient to permit a jury to find that such speed caused its wreck, and that its driver was guilty of actionable negligence. *Crisp v. Medlin*, 264 N.C. 314, 141 S.E.2d 609 (1965).

**A violation of subsection (a) would be negligence per se** and if injury proximately result therefrom, it would be actionable. *Tarrant v. Pepsi-Cola Bottling Co.*, 221 N.C. 390, 20 S.E.2d 565 (1942).

**Evidence Tending to Show "Speed Greater than Is Reasonable and Prudent."**—Evidence tending to show that the driver of a truck was traveling 35 to 40 miles per hour in an early morning fog which limited visibility to 100 or 125 feet, that he had overtaken a vehicle traveling in the same direction and was attempting to pass such vehicle 250 or 300 feet before reaching a curve, and collided with plaintiff's car which approached from the opposite direction, was held sufficient to be submitted to the jury on the issue of the negligence of the driver of the truck. *Winfield v. Smith*, 230 N.C. 392, 53 S.E.2d 251 (1949).

Evidence of speed greater than was reasonable and prudent under the conditions then existing and, in any event, in excess of 45 miles per hour, was evidence of negligence. *Steelman v. Benfield*, 228 N.C. 651, 46 S.E.2d 829 (1948), decided before the 1947 amendment, which increased the maximum speed for passenger cars from 45 to 55 miles an hour.

Under this section prior to the 1947 amendment, where plaintiff's evidence tended to show that the driver was operating defendant's bus at a rate of 40 to 50 miles an hour in heavy traffic around a curve or an upgrade, an instruction that a speed of 45 miles per hour, rather than a speed in excess of 45 miles per hour, was prima facie evidence that the speed was unlawful, was held not prejudicial in view of the requirement in subsection (c) to reduce speed below the prima facie limit prescribed in traversing a curve or when special hazards exist with respect to other traffic. *Garvey v. Greyhound Corp.*, 228 N.C. 166, 45 S.E.2d 58 (1947).

**Evidence Showing Excessive Speed.**—See *State v. Goins*, 233 N.C. 460, 64 S.E.2d 289 (1951).

The principle that the mere fact of a

collision with a vehicle ahead furnishes some evidence that the following motorist was negligent as to speed, was following too closely, or failed to keep a proper lookout is not absolute; the negligence, if any, depends upon the circumstances. *Powell v. Cross*, 263 N.C. 764, 140 S.E.2d 393 (1965).

Driver held driving at a speed greater than was reasonable and prudent under the conditions existing. *Cronenberg v. United States*, 123 F. Supp. 693 (E.D.N.C. 1954).

Mute evidence of extensive damage to front end of defendant's car, of blood spots on car and of car coming to rest 365 feet from where other blood spots began, tends to show that defendant had not slackened his speed of 75 to 80 miles per hour up to the moment of striking deceased, that he was violating this section. *State v. Phelps*, 242 N.C. 540, 89 S.E.2d 132 (1955).

**Evidence held sufficient to be submitted to the jury** on the question of the negligence of a driver in traveling at excessive speed and in failing to maintain a proper lookout and in failing to keep his car under proper control. *Blalock v. Hart*, 239 N.C. 475, 80 S.E.2d 373 (1954).

Evidence that defendant failed to yield the right of way to the plaintiff who was on the right, and that defendant was driving at 50 miles per hour through the intersection, raised the issue of defendant's negligence, and the motion for nonsuit at the close of all the evidence was properly denied. *Price v. Gray*, 246 N.C. 162, 97 S.E.2d 884 (1957).

The evidence tended to show that defendant was guilty of negligence in not decreasing speed when approaching and entering an intersection at a speed of 60 to 70 miles an hour in violation of subsection (c) of this section. *Stockwell v. Brown*, 254 N.C. 662, 119 S.E.2d 795 (1961).

**Evidence held insufficient to be submitted to jury** on question of maximum speed limit for business district where it did not bring locale of collision within statutory definition of such district. *Tillman v. Bellamy*, 242 N.C. 201, 87 S.E.2d 253 (1955).

**Evidence Negating Excessive Speed.**—In *Tysinger v. Coble Dairy Prods.*, 225 N.C. 717, 36 S.E.2d 246 (1945), it was held that in the light of admitted facts as to the length of marks on the shoulder of highway and the point at which truck came to rest, suggestion of a speed of 45 miles per hour as the truck was leaving the highway and going on the shoulder was contrary to human experience.

**Evidence held to show violation of this section,** and to warrant submission to the jury of the issue of defendants' negligence. *Winfield v. Smith*, 230 N.C. 392, 53 S.E.2d 251 (1949). See *Brafford v. Cook*, 232 N.C. 699, 62 S.E.2d 327 (1950).

**Truck with Trailer Attached.**—See *Jarman v. Philadelphia-Detroit Lines*, 131 F.2d 728 (4th Cir. 1942); *State v. Brooks*, 210 N.C. 273, 186 S.E. 237 (1936).

**Contributory Negligence of Guest Held for Jury.**—The evidence tended to show that plaintiff was a guest in a truck being driven by defendant, that it was misting rain and the road was wet, that defendant was driving at an excessive speed of 60 to 65 miles per hour, but that defendant was sober and was an experienced and competent driver, and that plaintiff remonstrated several times as to speed and was reassured by defendant that he had been driving for twenty-five years without an accident. In plaintiff's suit to recover for injuries sustained when the car skidded and turned over on the highway, it was held that plaintiff was not guilty of contributory negligence as a matter of law in failing to request that defendant stop the car and permit him to get out, but the issue of contributory negligence should have been submitted to the jury. *Samuels v. Bowers*, 232 N.C. 149, 59 S.E.2d 787 (1950).

**Warrant Charging No Offense.** — A warrant, charging merely that defendant operated his automobile at a designated speed in excess of the maximum prescribed by statute and the applicable municipal ordinance, charges no criminal offense, and defendant's motion in arrest of judgment should be allowed, since under the provisions of this section such speed constitutes merely prima facie evidence that the speed is unlawful. *State v. Crayton*, 214 N.C. 579, 199 S.E. 918 (1938).

**Applied in Gaffney v. Phelps**, 207 N.C. 553, 178 S.E. 231 (1935) (speed in entering intersection); *Hancock v. Wilson*, 211 N.C. 129, 189 S.E. 631 (1937); *Sparks v. Willis*, 228 N.C. 25, 44 S.E.2d 343 (1947); *State v. Blankenship*, 229 N.C. 589, 50 S.E.2d 724 (1948); *Bobbitt v. Haynes*, 231 N.C. 373, 57 S.E.2d 361 (1950); *Whiteman v. Seashore Transp. Co.*, 231 N.C. 701, 58 S.E.2d 752 (1950); *Bumgardner v. Allison*, 238 N.C. 621, 78 S.E.2d 752 (1953); *McClamrock v. White Packing Co.*, 238 N.C. 648, 78 S.E.2d 749 (1953) (as to subsection (e)); *Gantt v. Hobson*, 240 N.C. 426, 82 S.E.2d 384 (1954) (as to subsection (h)); *Combs v. United States*, 122 F. Supp. 280 (E.D.N.C. 1954) (as to

subsection (a)); *Wilson v. Webster*, 247 N.C. 393, 100 S.E.2d 829 (1957); *Bass v. Lee*, 255 N.C. 73, 120 S.E.2d 570 (1961); *Powell v. Clark*, 255 N.C. 707, 122 S.E.2d 706 (1961); *Scarborough v. Ingram*, 256 N.C. 87, 122 S.E.2d 798 (1961); *Bulluck v. Long*, 256 N.C. 577, 124 S.E.2d 716 (1962); *Phillips v. Alston*, 257 N.C. 438, 125 S.E.2d 580 (1962); *Benson v. Sawyer*, 257 N.C. 765, 127 S.E.2d 549 (1962); *Parker v. Bruce*, 258 N.C. 341, 128 S.E.2d 561 (1962); *Queen v. Jarrett*, 258 N.C. 405, 128 S.E.2d 894 (1963); *State v. Wells*, 259 N.C. 173, 130 S.E.2d 299 (1963); *Scott v. Clark*, 261 N.C. 102, 134 S.E.2d 181 (1964); *Taney v. Brown*, 262 N.C. 438, 137 S.E.2d 827 (1964); *Hall v. Little*, 262 N.C. 618, 138 S.E.2d 282 (1964); *Knight v. Seymour*, 263 N.C. 790, 140 S.E.2d 410 (1965); *Reeves v. Campbell*, 264 N.C. 224, 141 S.E.2d 296 (1965); *Carolina Coach Co. v. Cox*, 337 F.2d 101 (4th Cir. 1964).

**Quoted in Butler v. Allen**, 233 N.C. 484, 64 S.E.2d 561 (1951); *Adcox v. Austin*, 235 N.C. 591, 70 S.E.2d 837 (1952); as to subsection (e), in *Keener v. Beal*, 246 N.C. 247, 98 S.E.2d 19 (1957); as to subsection (c), in *Clifton v. Turner*, 257 N.C. 92, 125 S.E.2d 339 (1962).

**Stated in State v. Sumner**, 232 N.C. 386, 61 S.E.2d 84 (1950); *Freshman v. Stallings*, 128 F. Supp. 179 (E.D.N.C. 1955); *Parlier v. Barnes*, 260 N.C. 341, 132 S.E.2d 684 (1963).

**Cited in State v. Mickle**, 194 N.C. 808, 140 S.E. 150 (1927); *State v. Palmer*, 197 N.C. 135, 147 S.E. 817 (1929); *Burke v. Carolina Coach Co.*, 198 N.C. 8, 150 S.E. 636 (1929); *Lancaster v. B. & H. Coast Line*, 198 N.C. 107, 150 S.E. 716 (1929); *Rudd v. Holmes*, 198 N.C. 640, 152 S.E. 894 (1930); *Pittman v. Downing*, 209 N.C. 219, 183 S.E. 362 (1936); *Taft v. Maryland Cas. Co.*, 211 N.C. 507, 191 S.E. 10 (1937); *Pearson v. Luther*, 212 N.C. 412, 193 S.E. 739 (1937); *Reeves v. Staley*, 220 N.C. 573, 18 S.E.2d 239 (1942); *Brown v. Southern Paper Prods. Co.*, 222 N.C. 626, 24 S.E.2d 334 (1943); *Crone v. Fisher*, 223 N.C. 635, 27 S.E.2d 642 (1943); *Hobbs v. Queen City Coach Co.*, 225 N.C. 323, 34 S.E.2d 211 (1945); *Matheny v. Central Motor Lines*, 233 N.C. 673, 65 S.E.2d 361 (1951); *Hansley v. Tilton*, 234 N.C. 3, 65 S.E.2d 300 (1951); *Pemberton v. Lewis*, 235 N.C. 188, 69 S.E.2d 512 (1952); *Childress v. Johnson Motor Lines*, 235 N.C. 522, 70 S.E.2d 558 (1952); *Jernigan v. Jernigan*, 236 N.C. 430, 72 S.E.2d 912 (1952); *Powell v. Daniel*, 236 N.C. 489, 73 S.E.2d 143 (1952); *Lowe v. Department of Motor Vehicles*, 244 N.C. 353, 93 S.E.2d



448 (1956); *Weaver v. C. W. Myers Trading Post, Inc.*, 245 N.C. 106, 95 S.E.2d 533 (1956); *Hennis Freight Lines, Inc. v. Burlington Mills Corp.*, 246 N.C. 143, 97 S.E.2d 850 (1957); *Lookabill v. Regan*, 247 N.C. 199, 100 S.E.2d 521 (1957); *Durham v. McLean Trucking Co.*, 247 N.C. 204, 100 S.E.2d 348 (1957); *Hollowell v. Archbell*, 250 N.C. 716, 110 S.E.2d 262 (1959); *Beaver v. Scheidt*, 251 N.C. 671, 111 S.E.2d 881 (1960); *Kennedy v. James*, 252 N.C. 434, 113 S.E.2d 889 (1960); *Pridgen v. Uzzell*, 254 N.C. 292, 118 S.E.2d 755 (1961); *Peeden v. Tait*, 254 N.C. 489,

119 S.E.2d 450 (1961); *Brewer v. Powers Trucking Co.*, 256 N.C. 175, 123 S.E.2d 608 (1962); *Gilliam v. Propst Constr. Co.*, 256 N.C. 197, 123 S.E.2d 504 (1962); *Dunlap v. Lee*, 257 N.C. 447, 126 S.E.2d 62 (1962); *Jewell Ridge Coal Corp. v. Charlotte*, 204 F. Supp. 256 (W.D.N.C. 1962); *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965); *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965); *Cogdell v. Taylor*, 264 N.C. 424, 142 S.E.2d 36 (1965).

**§ 20-141.1. Restrictions in speed zones near rural public schools.**—Whenever the State Highway Commission shall determine that the proximity of a public school to a public highway, coupled with the number of pupils in ordinary regular attendance at such school, results in a situation that renders the applicable speed set out in G.S. 20-141 greater than is reasonable or safe, under the conditions found to exist with respect to any public highway near such school, said Commission shall establish a speed zone on such portion of said public highway near such school as it deems necessary, and determine and declare a reasonable and safe speed limit for such speed zone, which shall be effective when appropriate signs giving notice thereof are erected at each end of said zone so as to give notice to any one entering the zone. This section does not apply with respect to any portion of any street or highway within the corporate limits of any incorporated city or town. Operation of a motor vehicle in any such zone at a rate of speed in excess of that fixed pursuant to the powers granted in this section is a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court. (1951, c. 782; 1957, c. 65, s. 11.)

**Local Modification.**—City of Greensboro: 1953, c. 1075.

**Restriction Limited to Hours Posted.**—The limitation of speed in the vicinity of a schoolhouse during school hours, effected

by the posting of appropriate signs by the Highway Commission, does not affect the speed restrictions outside the time limited *Clark v. Rucker*, 251 N.C. 90, 110 S.E.2d 605 (1959).

**§ 20-141.2. Prima facie rule of evidence as to operation of motor vehicle altered so as to increase potential speed.**—Proof of the operation upon any street or highway of North Carolina at a speed in excess of the limits provided by law of any motor vehicle when the motor, or any mechanical part or feature, or the design of the motor vehicle has been changed or altered so that there is a variation between such motor vehicle as changed or altered and the motor vehicle as constructed according to specification of the original motor vehicle manufacturer, with the result that the potential speed of such vehicle has been increased beyond that which existed prior to such change or alteration, or the proof of operation upon any street or highway of North Carolina at a speed in excess of the limits provided by law of any motor vehicle assembled from parts of two or more different makes of motor vehicles, whether or not any specially made or specially designed parts or appliances are included in the manufacture and assembly thereof, shall be prima facie evidence that such motor vehicle was operated at such time by the registered owner thereof. (1953, c. 1220.)

**Editor's Note.**—For brief comment on this section, see 31 N.C.L. Rev. 418 (1953).

**§ 20-141.3. Unlawful racing on streets and highways.**—(a) It shall be unlawful for any person to operate a motor vehicle on a street or highway wilfully in prearranged speed competition with another motor vehicle. Any person

violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than five hundred dollars (\$500.00) or imprisonment for not less than sixty (60) days, or both, in the discretion of the court.

(b) It shall be unlawful for any person to operate a motor vehicle on a street or highway wilfully in speed competition with another motor vehicle. Any person wilfully violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars (\$50.00), or imprisonment of not more than two years, or by both such fine and imprisonment in the discretion of the court.

(c) It shall be unlawful for any person to authorize or knowingly permit a motor vehicle owned by him or under his control to be operated on a public street, highway, or thoroughfare in prearranged speed competition with another motor vehicle, or to place or receive any bet, wager, or other thing of value from the outcome of any prearranged speed competition on any public street, highway, or thoroughfare. Any person violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine or imprisonment, or both, in the discretion of the court.

(d) The Commissioner of Motor Vehicles shall revoke the operator's or chauffeur's license or privilege to drive of every person convicted of violating the provisions of subsection (a) or subsection (c) of this section, said revocation to be for three years; provided any person whose license has been revoked under this section may apply for a new license after eighteen (18) months from revocation. Upon filing of such application the Department may issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past eighteen (18) months and that his conduct and attitude are such as to entitle him to favorable consideration and upon such terms and conditions which the Department may see fit to impose for the balance of the three-year revocation period, which period shall be computed from the date of the original revocation.

(e) The Commissioner may suspend the operator's or chauffeur's license or privilege to drive of every person convicted of violating the provisions of subsection (b) of this section. Such suspension shall be for a period of time within the discretion of the Commissioner, but not to exceed one year.

(f) All suspensions and revocations made pursuant to the provisions of this section shall be in the same form and manner and shall be subject to all procedures as now provided for suspensions and revocations made under the provisions of article 2 of chapter 20 of the General Statutes. Any person whose license or privilege is suspended or revoked under this section must comply with the provisions of article 9A of chapter 20 of the General Statutes relating to filing proof of financial responsibility as a condition to the return or reissuance of his license or privilege after the expiration of the period of revocation or suspension.

(g) When any officer of the law discovers that any person has operated or is operating a motor vehicle wilfully in prearranged speed competition with another motor vehicle on a street or highway, he shall seize the motor vehicle and deliver the same to the sheriff of the county in which such offense is committed, or the same shall be placed under said sheriff's constructive possession if delivery of actual possession is impractical, and the vehicle shall be held by the sheriff pending the trial of the person or persons arrested for operating such motor vehicle in violation of subsection (a) of this section. The sheriff shall restore the seized motor vehicle to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in an amount double the value of the property, which bond shall be approved by said sheriff and shall be conditioned on the return of the motor vehicle to the custody of the sheriff on the day of trial of the person or persons accused. Upon the acquittal of the person charged with operating said motor vehicle wilfully in prearranged speed competition with another motor vehicle, the sheriff shall return the motor vehicle to the owner thereof.



Upon conviction of the operator of said motor vehicle of a violation of subsection (a) of this section, the court shall order a sale at public auction of said motor vehicle and the officer making the sale, after deducting the expenses of keeping the motor vehicle, the fee for the seizure, and the costs of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise, at said hearing or in other proceeding brought for said purpose, as being bona fide, and shall pay the balance of the proceeds to the proper officer of the county who receives fines and forfeitures to be used for the school fund of the county. All liens against a motor vehicle sold under the provisions of this section shall be transferred from the motor vehicle to the proceeds of its sale. If, at the time of hearing, or other proceeding in which the matter is considered, the owner of the vehicle can establish to the satisfaction of the court that said motor vehicle was used in prearranged speed competition with another motor vehicle on a street or highway without the knowledge or consent of the owner, and that the owner had no reasonable grounds to believe that the motor vehicle would be used for such purpose, the court shall not order a sale of the vehicle but shall restore it to the owner, and the said owner shall, at his request, be entitled to a trial by jury upon such issues.

If the owner of said motor vehicle cannot be found, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if said owner shall not appear within ten (10) days after the last publication of the advertisement, the property shall be sold, or otherwise disposed of in the manner set forth in this section.

When any vehicle confiscated under the provisions of this section is found to be specially equipped or modified from its original manufactured condition so as to increase its speed, the court shall, prior to sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. However, if the court should find that such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition, then the court may order that the vehicle be turned over to such governmental agency or public official within the territorial jurisdiction of the court as the court shall see fit, to be used in the performance of official duties only, and not for resale, transfer, or disposition other than as junk: Provided, that nothing herein contained shall affect the rights of lien holders and other claimants to said vehicles as set out in this section. (1955, c. 1156; 1957, c. 1358; 1961, c. 354; 1963, c. 318.)

**Editor's Note.** — The 1963 amendment added the proviso and the second sentence of subsection (d).

**The violation of subsections (a) and (b) of this section is negligence per se.** Those who participate are on a joint venture and are encouraging and inciting each other. The primary negligence involved is the race itself. All who wilfully participate in speed competition between motor vehicles on a public highway are jointly and concurrently negligent and, if damage to one not involved in the race proximately results from it, all participants are liable, regardless of which of the racing cars actually inflicts the injury, and regardless of the fact that the injured person was a passenger in one of the racing vehicles. *Boykin v. Bennett*, 253 N.C. 725, 118 S.E.2d 12 (1961).

**All Engaged in Race Are Liable.**—Racing in the public highways is a plain and serious danger to every other person using the way, and a danger it is often impossible to avoid. When persons are making such unlawful use of the highways and another is injured thereby, the former are liable in damages for the injuries sustained by the latter. And where a person is injured by such racing all engaged in the race are liable although only one, or even none, of the vehicles came in contact with the injured person. *Boykin v. Bennett*, 253 N.C. 725, 118 S.E.2d 12 (1961).

**Applied in** *State v. Daniel*, 255 N.C. 717, 122 S.E.2d 704 (1961); *Mason v. Gillikin*, 256 N.C. 527, 124 S.E.2d 537 (1962).

**Cited in** *Orange Speedway, Inc. v. Clayton*, 247 N.C. 528, 101 S.E.2d 406 (1958).



**§ 20-142. Railroad warning signals must be obeyed.**—Whenever any person driving a vehicle approaches a highway and interurban or steam railway grade crossing, and a clearly visible and positive signal gives warning of the immediate approach of a railway train or car, it shall be unlawful for the driver of the vehicle to fail to bring the vehicle to a complete stop before traversing such grade crossing. (1937, c. 407, s. 104.)

**§ 20-143. Vehicles must stop at certain railway grade crossings.**—The road governing body (whether State or county) is hereby authorized to designate grade crossings of steam or interurban railways by State and county highways, at which vehicles are required to stop, respectively, and such railways are required to erect signs thereat notifying drivers of vehicles upon any such highway to come to a complete stop before crossing such railway tracks, and whenever any such crossing is so designated and sign-posted it shall be unlawful for the driver of any vehicle to fail to stop within fifty feet, but not closer than ten feet, from such railway tracks before traversing such crossing. No failure so to stop, however, shall be considered contributory negligence per se in any action against the railroad or interurban company for injury to person or property; but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether the plaintiff was guilty of contributory negligence: Provided, that all school trucks and passenger busses be required to come to a complete stop at all railroad crossings. (1937, c. 407, s. 105.)

**Editor's Note.**—For article on automobile accidents at railroad crossings, see 23 N.C.L. Rev. 223.

For note on contributory negligence and obstructions of view at railroad crossings, see 29 N.C.L. Rev. 245.

Most of the cases treated below were decided under the corresponding provisions of the earlier law, but should be of assistance in the interpretation of the present section.

**Duty to Stop May Be Mixed Question of Law and Fact.**—A driver of an automobile is not required by this section under all circumstances to stop before driving upon a railroad grade crossing, and whether he is required to do so under the particular circumstances disclosed by the evidence is ordinarily a mixed question of law and fact to be submitted to the jury upon proper instruction from the court. *Keller v. Southern Ry.*, 205 N.C. 269, 171 S.E. 73 (1933).

**Necessity for Section.**—Although a railroad is a highway (*Hinton v. Southern Ry.*, 172 N.C. 587, 90 S.E. 756 (1916)), an amendment of the statute (Acts of 1923) was necessary in order to compel the operator of a motor vehicle to bring it to a full stop before crossing or attempting to cross a railroad track. *State v. Stallings*, 189 N.C. 104, 126 S.E. 187 (1925).

**§ 20-144. Special speed limitation on bridges.**—It shall be unlawful to drive any vehicle upon any public bridge, causeway or viaduct at a speed which is greater than the maximum speed which can with safety to such structure be maintained thereon, when such structure is sign-posted as provided in this section.

**Failure to Stop as Negligence Per Se—Contributory Negligence.**—The failure of a motorist to stop his automobile before crossing a railroad at a grade crossing on a public highway, as directed by this section, "at a distance not exceeding fifty feet from the nearest rail," does not constitute contributory negligence per se in his action against the railroad company to recover damages to his car caused by a collision with a train standing upon the tracks, and where the evidence tends only to show that the proximate cause of the plaintiff's injury was his own negligence in exceeding the speed he should have used under the circumstances, a judgment as of nonsuit thereon should be entered on defendant's motion therefor properly entered. *Weston v. Southern Ry.*, 194 N.C. 210, 139 S.E. 237 (1927).

The failure of a motorist to come to a full stop before entering upon a railroad crossing as required by statute is not contributory negligence per se, but such failure is a circumstance to be considered by the jury with the other evidence in the case upon the question. *White v. North Carolina R.R.*, 216 N.C. 79, 3 S.E.2d 310 (1939).

**Cited in** *Leary v. Norfolk So. Bus Corp.*, 220 N.C. 745, 18 S.E.2d 426 (1942).

The State Highway Commission, upon request from any local authorities, shall, or upon its own initiative may, conduct an investigation of any public bridge, causeway or viaduct, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this article, the Commissioner shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of one hundred feet beyond each end of such structure. The findings and determination of the Commission shall be conclusive evidence of the maximum speed which can with safety to any such structure be maintained thereon. (1937, c. 407, s. 106; 1957, c. 65, s. 11.)

**Cross Reference.**—As to power of State Highway Commission to fix maximum load limits on bridges, see § 136-72.

**§ 20-145. When speed limit not applicable.**—The speed limitations set forth in this article shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies, nor to vehicles operated by the duly authorized officers, agents and employees of the North Carolina Utilities Commission when traveling in performance of their duties in regulating and checking the traffic and speed of busses, trucks, motor vehicles and motor vehicle carriers subject to the regulations and jurisdiction of the North Carolina Utilities Commission. This exemption shall not, however, protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others. (1937, c. 407, s. 107; 1947, c. 987.)

**Editor's Note.**—For note on municipal liability for accident involving fire truck responding to emergency call for inhalator, see 30 N.C.L. Rev. 89 (1951). For note discussing effect of this section on standard of care required of police officers in performance of official duties, see 39 N.C.L. Rev. 460 (1961).

**Standard of Care Applicable to Police Officers.**—The fact that a police vehicle is exempt from the operation of traffic regulations, or enjoys certain prior rights over other vehicles, does not permit the operator of such vehicle to drive in reckless disregard of the safety of others; nor does it relieve him from the general duty of exercising due care. *Goddard v. Williams*, 251 N.C. 128, 110 S.E.2d 820 (1959).

In an action alleging actionable negligence on the part of a police officer the court said: "We do not hold that an officer, when in pursuit of a lawbreaker, is un-

der no obligation to exercise a reasonable degree of care to avoid injury to others who may be on the public roads and streets. What we do hold is that, when so engaged, he is not to be deemed negligent merely because he fails to observe the requirements of the Motor Vehicle Act. His conduct is to be examined and tested by another standard. He is required to observe the care which a reasonably prudent man would exercise in the discharge of official duties of a like nature under like circumstances. We know of no better standard by which to determine a claim of negligence on the part of a police officer than by comparing his conduct to the care which a reasonably prudent man would exercise, in the discharge of official duties of like nature under like circumstances." *Goddard v. Williams*, 251 N.C. 128, 110 S.E.2d 820 (1959).

**§ 20-146. Drive on right side of roadway; exceptions.**—(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway except as follows:

- (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
- (2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon

the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for thru traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn.

(c) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes or except as permitted under subsection (a) (2) hereof. (1937, c. 407, s. 108; 1965, c. 678, s. 2.)

**Editor's Note.** — The 1965 amendment rewrote this section.

Some of the cases cited under this section were decided under the corresponding provisions of the former law.

For discussion of the subject matter of statutes similar to this and succeeding sections, see 2 N.C.L. Rev. 178; 5 N.C.L. Rev. 248.

**The purpose of this section** is the protection of occupants of other vehicles then using the public highway and pedestrians and property thereon. *Powell v. Clark*, 255 N.C. 707, 122 S.E.2d 706 (1961).

**This section prescribes a standard of care** for a motorist, and the standard fixed by the legislature is absolute. *Bondurant v. Mastin*, 252 N.C. 190, 113 S.E.2d 292 (1960).

**A person walking along a public highway pushing a handcart is a pedestrian** within the purview of § 20-174 (d), and is not a driver of a vehicle within the meaning of this section and § 20-149. *Lewis v. Watson*, 229 N.C. 20, 47 S.E.2d 484 (1948).

**Proximate Cause.** — A violation of this section is negligence per se, but such negligence is not actionable unless there is a causal relation between the breach and the injury. *Grimes v. Carolina Coach Co.*, 203 N.C. 605, 166 S.E. 599 (1932). See *Stovall v. Ragland*, 211 N.C. 536, 190 S.E. 899 (1937); *McCombs v. McLean Trucking Co.*, 252 N.C. 699, 114 S.E.2d 683 (1960).

A safety statute, such as this section, is pertinent when, and only when, there is evidence tending to show a violation thereof of proximately caused the alleged injuries. *Powell v. Clark*, 255 N.C. 707, 122 S.E.2d 706 (1961).

If the negligence resulting from the failure to comply with the provisions of this

section proximately causes injury, liability results. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

Whether a violation of the provisions of this section is the proximate cause of an injury is for the jury to determine. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

Where there was testimony of witnesses who were at the scene of the collision almost immediately after it occurred to the effect that they saw glass, flour and mud on the south side of the highway, intestate's right side and defendant's left side of the highway, and nothing of the kind on the opposite side of the highway, the north side, it was held that this was evidence that defendant's truck was being operated in violation of this and the two following sections, which required defendant to drive his truck on his right side of the highway and to give plaintiff's coupe half of the main traveled portion of the roadway as nearly as possible, and that this violation proximately caused the collision which resulted in the death of plaintiff's intestate. *Wyrick v. Ballard & Ballard Co.*, 224 N.C. 301, 29 S.E.2d 900 (1944).

**Burden on Plaintiff to Establish Negligence.**—Where plaintiff's evidence leaves in speculation and conjecture the determinative fact of whether defendant's car was being driven on the wrong side of the highway at the time of the collision, defendant's motion to nonsuit is properly granted, the burden being on plaintiff to establish the negligence of defendant. *Cheek v. Barnwell Warehouse & Brokerage Co.*, 209 N.C. 569, 183 S.E. 729 (1936).

**Negligence Per Se.**—An instruction that the violation of statutes regulating the operation of motor vehicles and the conduct of pedestrians on the highway would con-



stitute negligence per se, and would be actionable if the proximate cause of injury, is held without error when it appears that the instruction was applied solely to this section and § 20-174 prescribing that vehicles should be operated on the right-hand side of the highway and that warning should be given pedestrians, there being no reference in the charge to a violation of speed restrictions which § 20-141 makes merely prima facie evidence that the speed is unlawful. *Williams v. Woodward*, 218 N.C. 305, 10 S.E.2d 913 (1940).

A violation of this section is negligence per se, but to be actionable, such negligence must be proximate cause of injury. *Tysinger v. Coble Dairy Prods.*, 225 N.C. 717, 36 S.E.2d 246 (1945). See *Hoke v. Atlantic Greyhound Corp.*, 226 N.C. 692, 40 S.E.2d 345 (1946); *Watters v. Parrish*, 252 N.C. 787, 115 S.E.2d 1 (1960).

Violation of this section is negligence per se. *Boyd v. Harper*, 250 N.C. 334, 108 S.E.2d 598 (1959).

One who fails to comply with the provisions of this section is negligent. *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963).

**Culpable Negligence.**—The rule in the application of the law with respect to an intentional or unintentional violation of a safety statute such as this section is simply this: The violation of a safety statute which results in injury or death will constitute culpable negligence if the violation is wilful, wanton, or intentional. But, where there is an unintentional or inadvertent violation of the statute, such violation standing alone does not constitute culpable negligence. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable provision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. *State v. Hancock*, 248 N.C. 432, 103 S.E.2d 491 (1958).

**Driving to Left to Avoid Collision.**—Where bus driver cut his bus to the left and crossed the center line in an effort to avoid the collision, it was held that under the circumstances of case, such act was not negligence. *Ingram v. Smoky Mountain Stages*, 225 N.C. 444, 35 S.E.2d 337 (1945).

**Both Drivers to Left of Center.**—Where plaintiff passenger was injured in a head-on collision of two automobiles on a dirt road in the dust raised by a third car, testimony of witnesses respectively that

at least a part of each driver's vehicle was to the left of his center of the highway takes the issue as to the negligence of each driver to the jury. *Forte v. Goodwin*, 261 N.C. 608, 135 S.E.2d 552 (1964).

**Evidence Sufficient to Show Violation of This Section.**—See *State v. Goins*, 233 N.C. 460, 64 S.E.2d 289 (1951).

A passenger in the truck driven by intestate testified to the effect that intestate was driving on his right side of the road in an ordinary manner, that defendant's tractor with trailer-tanker was traveling in the opposite direction, and that the truck hit the trailer-tanker which was sticking out to its left as the tractor was being driven to its right of the road, resulting in intestate's death. It was held that the testimony is sufficient to support an inference that the defendant violated this section in failing to drive his tractor-trailer on his right half of the highway, proximately causing the death of plaintiff's intestate, and compulsory nonsuit was error. *Gladden v. Setzer*, 230 N.C. 269, 52 S.E.2d 804 (1949).

Blood spots held to indicate that when defendant's car struck deceased its left wheels were on or over the center of the highway in violation of this section. *State v. Phelps*, 242 N.C. 540, 89 S.E.2d 132 (1955).

**Evidence Insufficient to Show Intentional, Wilful or Wanton Violation.**—See *State v. Hancock*, 248 N.C. 432, 103 S.E.2d 491 (1958); *State v. Eller*, 256 N.C. 706, 124 S.E.2d 806 (1962).

**Applied in Hancock v. Wilson, 211 N.C. 129, 189 S.E. 631 (1937); *Newbern v. Leary*, 215 N.C. 134, 1 S.E.2d 384 (1939). See also *State v. Toler*, 195 N.C. 481, 142 S.E. 715 (1928); *State v. Durham*, 201 N.C. 724, 161 S.E. 398 (1931); *Queen City Coach Co. v. Lee*, 218 N.C. 320, 11 S.E.2d 341 (1940); *Horton v. Peterson*, 238 N.C. 446, 78 S.E.2d 181 (1953); *State v. Turberville*, 239 N.C. 25, 79 S.E.2d 359 (1953); *Combs v. United States*, 122 F. Supp. 260 (E.D.N.C. 1954); *Hennis Freight Lines, Inc. v. Burlington Mills Corp.*, 246 N.C. 143, 97 S.E.2d 850 (1957); *Kirkman v. Baucom*, 246 N.C. 510, 98 S.E.2d 922 (1957); *Parker v. Flythe*, 256 N.C. 548, 124 S.E.2d 530 (1962); *Hardin v. American Mut. Fire Ins. Co.*, 261 N.C. 67, 134 S.E.2d 142 (1964); *Bass v. Roberson*, 261 N.C. 125, 134 S.E.2d 157 (1964); *Threadgill v. Kendall*, 262 N.C. 751, 138 S.E.2d 625 (1964).**

**Quoted in Maddox v. Brown, 232 N.C. 542, 61 S.E.2d 613 (1950).**

**Cited in White v. Cason, 251 N.C. 646, 111 S.E.2d 887 (1960); *Brewer v. Pow-***

ers Trucking Co., 256 N.C. 175, 123 S.E.2d 608 (1962); Wagner v. Eudy, 257 N.C. 199, 125 S.E.2d 598 (1962); McPherson v. Haire, 262 N.C. 71, 136 S.E.2d 224

(1964); State Highway Comm'n v. Raleigh Farmers Mkt., Inc., 263 N.C. 622, 139 S.E.2d 904 (1965).

**§ 20-146.1. Operation of motorcycles.**—It shall be unlawful for persons operating motorcycles upon the public highways of the State of North Carolina to travel thereon more than two abreast.

Any persons operating motorcycles upon the public highways shall operate the same as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

Upon conviction of the above offense, the punishment therefor shall be a fine not to exceed fifty dollars (\$50.00), or imprisonment not to exceed thirty days for each offense. (1965, c. 909.)

**§ 20-147. Keep to the right in crossing intersections or railroads.**—In crossing an intersection of highways or the intersection of a highway by a railroad right-of-way, the driver of a vehicle shall at all times cause such vehicle to travel on the right half of the highway unless such right side is obstructed or impassable. (1937, c. 407, s. 109.)

**Violation of Section Is Negligence.**—A motorist is required by statute to remain on the right side of the highway at a crossing or intersection and the violation

of this statute is negligence. Crofts v. Overnite Transp. Co., 246 N.C. 420, 98 S.E.2d 502 (1957).

**§ 20-148. Meeting of vehicles.**—Drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other at least one-half of the main-traveled portion of the roadway as nearly as possible. (1937, c. 407, s. 110.)

**Cross Reference.**—See notes to § 20-146.

**Editor's Note.**—Some of the cases cited below were decided under the corresponding provisions of the former law.

**This section prescribes a standard of care** for a motorist and the standard fixed by the legislature is absolute. Bondurant v. Mastin, 252 N.C. 190, 113 S.E.2d 292 (1960).

The standard of care fixed for a motorist in this section by the legislature is absolute. McGinnis v. Robinson, 258 N.C. 264, 128 S.E.2d 608 (1962).

**It is not relevant to a three-lane highway.** State v. Duncan, 264 N.C. 123, 141 S.E.2d 23 (1965).

**Violation as Negligence.**—Violation of this section is negligence per se. Hobbs v. Queen City Coach Co., 225 N.C. 323, 34 S.E.2d 211 (1945); Boyd v. Harper, 250 N.C. 334, 108 S.E.2d 598 (1959); McCombs v. McLean Trucking Co., 252 N.C. 699, 114 S.E.2d 683 (1960); Watters v. Parrish, 252 N.C. 787, 115 S.E.2d 1 (1960); Carswell v. Lackey, 263 N.C. 387, 117 S.E.2d 51 (1960).

A violation of this section would be negligence per se, and if such violation were proximate cause of the injury it would be actionable. Wallace v. Longest, 226 N.C. 161, 37 S.E.2d 112 (1946); Hoke v. Atlantic Greyhound Corp., 226 N.C. 692, 40

S.E.2d 345 (1946); McGinnis v. Robinson, 258 N.C. 264, 128 S.E.2d 608 (1962).

**Violation as Culpable Negligence.**—The violation of a safety statute which results in injury or death will constitute culpable negligence if the violation is willful, wanton, or intentional. But, where there is an unintentional or inadvertent violation of the statute, such violation standing alone does not constitute culpable negligence. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. State v. Roop, 255 N.C. 607, 122 S.E.2d 363 (1961).

**Violation Must Be Proximate Cause of Injury.**—A safety statute, such as this section, is pertinent when, and only when, there is evidence tending to show a violation thereof proximately caused the alleged injuries or death. State v. Duncan, 264 N.C. 123, 141 S.E.2d 23 (1965).

**Driving on Wrong Side of Road.**—See same catchline in note to § 20-140.

A motorist, although in his proper lane of traffic, must exercise ordinary care to avoid injuring persons or vehicles in his lane if he discovers their peril or in the ex-

ercise of ordinary care could discover it. It is his duty to slow down and have his vehicle under control and to pull over on the shoulder, if by doing so, he can avoid injury. *Rundle v. Wyrick*, 194 F. Supp. 630 (M.D.N.C. 1961), *aff'd sub nom. Rundle v. Grubb Motor Lines, Inc.*, 300 F.2d 333 (4th Cir. 1962).

**Assumption That Vehicle Will Turn to Right.** — When the driver of one of the automobiles is not observing the rule of this section, as the automobiles approach each other, the other may assume that before the automobiles meet the driver of the approaching automobile will turn to his right, so that the two automobiles may pass each other in safety. *Shirley v. Ayers*, 201 N.C. 51, 158 S.E. 840 (1931). See also *James v. Carolina Coach Co.*, 207 N.C. 742, 178 S.E. 607 (1935); *Hancock v. Wilson*, 211 N.C. 129, 189 S.E. 631 (1937); *Hoke v. Atlantic Greyhound Corp.*, 227 N.C. 412, 42 S.E.2d 593 (1947); *Morgan v. Saunders*, 236 N.C. 162, 72 S.E.2d 411 (1952).

Ordinarily, a motorist has the right to assume that the driver of a vehicle approaching on the same side or on his left-hand side will yield half of the highway or turn out in time to avoid a collision, but this right is not absolute. It may be qualified by the particular circumstances existing at the time. *Brown v. Southern Paper Prods. Co.*, 222 N.C. 626, 24 S.E.2d 334 (1943); *Hoke v. Atlantic Greyhound Corp.*, 227 N.C. 412, 42 S.E.2d 593 (1947); *Lamm v. Gardner*, 250 N.C. 540, 108 S.E.2d 847 (1959).

The right of a motorist to assume that the driver of a negligently operated automobile will observe the law in time to avoid collision is not absolute, but may be qualified by the particular circumstances at the time, such as the proximity and movement of the other vehicle and the condition and width of the road. *Morgan v. Saunders*, 236 N.C. 162, 72 S.E.2d 411 (1952); *Lamm v. Gardner*, 250 N.C. 540, 108 S.E.2d 847 (1959).

The driver of an automobile who is himself observing the law as set out in this section in meeting and passing an automobile proceeding in the opposite direction has the right ordinarily to assume that the driver of the approaching automobile will also observe the rule and avoid a collision. *Lucas v. White*, 248 N.C. 38, 102 S.E.2d 387 (1958).

The right of a motorist to assume that vehicles approaching from the opposite direction will remain on their right side of the highway is not absolute, and when a motorist approaches a machine emitting

a chemical fog obscuring the entire highway, he may not rely on such assumption when a reasonably prudent man might reasonably anticipate that a motorist might be on the highway meeting him and unable to keep safely on his side of the highway on account of the fog. *Moore v. Plymouth*, 249 N.C. 423, 106 S.E.2d 695 (1959).

The rule that a motorist traveling on his right or seasonably turning thereto has the right to assume that a car approaching from the opposite direction will comply with this section, and turn to its right in time to avoid a collision, is not applicable to a motorist who runs completely off the road to his right, loses control, and hits a car standing still completely off the hard surface on its left side of the highway with its lights on, since the rule merely absolves a motorist from blame if he continues at a reasonable rate of speed in his line of travel in reliance on the assumption, but does not relieve him from the duty of knowing the position of his car on the highway from his own observation. *Webb v. Hutchins*, 228 N.C. 1, 44 S.E.2d 350 (1947).

Notwithstanding the right of a motorist to so assume, still this does not lessen his duty to conform to the requirement of exercising due care under the existing circumstances, that is, to conform to the rule of the reasonably prudent man. *Hoke v. Atlantic Greyhound Corp.*, 227 N.C. 412, 42 S.E.2d 593 (1947), citing *Sebastian v. Horton Motor Lines*, 213 N.C. 770, 197 S.E. 539 (1938).

**Proximate Cause Is for Jury.** — Proximate cause is a matter for consideration of the jury under the law as declared by the court. *Wallace v. Longest*, 226 N.C. 161, 37 S.E.2d 112 (1946); *McCombs v. McLean Trucking Co.*, 252 N.C. 699, 114 S.E.2d 683 (1960).

Where evidence tended to show that driver of defendant's truck, in meeting the pick-up truck in which plaintiffs were riding, was not passing on his right side of highway, and was not giving oncoming truck at least one-half of the main traveled portion of the roadway as nearly as possible, in violation of the provisions of this section, question of whether defendant's truck was on left side of highway and, if so, whether proximate cause of collision would be for jury. *Wallace v. Longest*, 226 N.C. 161, 37 S.E.2d 112 (1946).

**Evidence held sufficient to show violation of this section.** *State v. Wooten*, 228 N.C. 628, 46 S.E.2d 868 (1948).

Evidence held to show violation of this section and to warrant submission to the jury of the issue of defendants' negligence.



Winfield v. Smith, 230 N.C. 392, 53 S.E.2d 251 (1949).

Evidence tending to show that the driver of a truck was traveling 35 to 40 miles per hour in an early morning fog which limited visibility to 100 or 125 feet, that he had overtaken a vehicle traveling in the same direction and was attempting to pass such vehicle 250 or 300 feet before reaching a curve, and collided with plaintiff's car which approached from the opposite direction, was held sufficient to be submitted to the jury on the issue of the negligence of the driver of the truck. *Winfield v. Smith*, 230 N.C. 392, 53 S.E.2d 251 (1949).

**Evidence Showing Failure to Yield One-Half of Roadway.**—See *State v. Goins*, 233 N.C. 460, 64 S.E.2d 289 (1951).

**Charge to Jury.**—In an action for damages caused by the collision of two motor vehicles, a charge that "If plaintiff has satisfied you from the evidence and by the greater weight that on this occasion the driver of the defendant's truck at the time of the collision failed to drive the defendant's truck upon the right half of the highway, then that would constitute negligence on the part of defendant's driver," seems to be in accord with this section. *Hopkins v. Colonial Stores*, 224 N.C. 137, 29 S.E.2d 455 (1944).

An instruction confusing the provisions of § 20-149, pertaining to the duty of the driver of any vehicle overtaking another vehicle proceeding in the same direction, with the provisions of this section, prescribing the respective duties of drivers of vehicles proceeding in opposite directions when meeting, was prejudicial error. *Lookabill v. Regan*, 245 N.C. 500, 96 S.E.2d 421 (1957).

**§ 20-149. Overtaking a vehicle.**—(a) The driver of any such vehicle overtaking another vehicle proceeding in the same direction shall pass at least two feet to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle. This subsection shall not apply when the overtaking and passing is done pursuant to the provisions of G.S. 20-150.1.

(b) The driver of an overtaking motor vehicle not within a business or residence district, as herein defined, shall give audible warning with his horn or other warning device before passing or attempting to pass a vehicle proceeding in the same direction, but his failure to do so shall not constitute negligence or contributory negligence per se in any civil action; although the same may be considered with the other facts in the case in determining whether the driver of the overtaking vehicle was guilty of negligence or contributory negligence. (1937, c. 407, s. 111; 1955, c. 913, s. 3; 1959, c. 247.)

**Local Modification.**—Durham, Mecklenburg, Vance and Wake, as to subsection (a): 1953, c. 772.

**Editor's Note.**—Some of the cases cited below were decided under the corresponding provisions of the former law.

An instruction on the right of a motorist to assume that an approaching vehicle would yield one half the highway in passing was held not objectionable in limiting such right to a motorist himself observing the requirements of the statute, when such instruction, considered in context, was to the effect that a motorist was not entitled to rely on such assumption if such motorist was himself then driving on his left side of the highway and was thereby contributing to the hazard and emergency that existed immediately prior to the collision. *Blackwell v. Lee*, 248 N.C. 354, 103 S.E.2d 703 (1958).

**Applied in** *Hennis Freight Lines, Inc. v. Burlington Mills Corp.*, 246 N.C. 143, 97 S.E.2d 850 (1957); *Kirkman v. Baucom*, 246 N.C. 510, 98 S.E.2d 922 (1957); *Parker v. Flythe*, 256 N.C. 548, 124 S.E.2d 530 (1962); *Hardin v. American Mut. Fire Ins. Co.*, 261 N.C. 67, 134 S.E.2d 142 (1964); *Scott v. Clark*, 261 N.C. 102, 134 S.E.2d 181 (1964).

**Quoted in** *Robinson v. Standard Transp. Co.*, 214 N.C. 489, 199 S.E. 725 (1938); *Beauchamp v. Clark*, 250 N.C. 132, 108 S.E.2d 535 (1959); *Eller v. United States*, 155 F. Supp. 273 (W.D.N.C. 1957).

**Cited in** *Hobbs v. Mann*, 199 N.C. 532, 155 S.E. 163 (1930); *Guthrie v. Gocking*, 214 N.C. 513, 199 S.E. 707 (1938); *Queen City Coach Co. v. Lee*, 218 N.C. 320, 11 S.E.2d 341 (1940); *Ingram v. Smoky Mountain Stages*, 225 N.C. 444, 35 S.E.2d 337 (1945); *Hansley v. Tilton*, 234 N.C. 3, 65 S.E.2d 300 (1951); *Wagner v. Eudy*, 257 N.C. 199, 125 S.E.2d 598 (1962); *Stephens v. Southern Oil Co.*, 259 N.C. 456, 131 S.E.2d 39 (1963); *Smith v. Corsat*, 260 N.C. 92, 131 S.E.2d 894 (1963).

**Purpose of Section.**— This section was enacted for the protection of the public upon the roads and highways of the State, and its violation is negligence per se entitling the person injured to his damages when there is a causal connection between

the negligent act and the injury complained of. *Wolfe v. Independent Coach Line*, 198 N.C. 140, 150 S.E. 876 (1929).

The principal purpose of this section is the protection of the "overtaken vehicle" and its occupants. *McGinnis v. Robinson*, 252 N.C. 574, 114 S.E.2d 365 (1960).

The object of this section is not only the protection of the overtaken vehicle and its occupants, but also the protection of the passing vehicle and its occupants. *Boykin v. Bisette*, 260 N.C. 295, 132 S.E.2d 616 (1963).

**Section Inapplicable Where Forward Vehicle Is in Left-Turn Lane.**—The rule of the road contained in this section does not apply where there are three lanes available to the motorist and the forward vehicle is in the left-turn lane and the overtaking vehicle is in the through-traffic lane. *Anderson v. Talman Office Supplies*, 234 N.C. 142, 66 S.E.2d 677 (1951). See *Anderson v. Talman Office Supplies*, 236 N.C. 519, 73 S.E.2d 141 (1952).

**Or Where Vehicles Are Proceeding in Opposite Directions.**—Absent unusual circumstances, this section has no bearing where the collision is between vehicles proceeding in opposite directions. *McGinnis v. Robinson*, 252 N.C. 574, 114 S.E.2d 365 (1960).

**Violation of subsection (a) is negligence** and if such negligence was the proximate cause of plaintiff's injuries, the defendant, nothing else appearing, is liable to the plaintiff in this action. *Stovall v. Ragland*, 211 N.C. 536, 190 S.E. 899 (1937), decided prior to the 1959 amendment to subsection (b) which added the provisions relative to negligence.

A violation of subsection (a) would be negligence per se and if injury proximately result therefrom, it would be actionable. *Tarrant v. Pepsi-Cola Bottling Co.*, 221 N.C. 390, 20 S.E.2d 565 (1942); *Clark v. Emerson*, 245 N.C. 387, 95 S.E.2d 880 (1957).

A violation of this section [now only subsection (a)] is negligence per se. *Kleibor v. Colonial Stores*, 159 F.2d 894 (4th Cir. 1947), decided prior to the 1959 amendment to subsection (b) which added the provisions relative to negligence. See *Sheldon v. Childers*, 240 N.C. 449, 82 S.E.2d 396 (1954).

A violation of subsection (b) prior to the 1959 amendment was formerly regarded as negligence per se. *Cowan v. Murrows Transfer, Inc.*, 262 N.C. 550, 138 S.E.2d 228 (1964).

**Common-law rule of ordinary care applies.** *Cowan v. Murrows Transfer, Inc.*, 262 N.C. 550, 138 S.E.2d 228 (1964).

**And a violation of subsection (b) is only evidence to be considered with other facts and circumstances in determining whether the violator used due care.** *Cowan v. Murrows Transfer, Inc.*, 262 N.C. 550, 138 S.E.2d 228 (1964).

While the failure of the operator of a motor vehicle passing another vehicle in open country to give audible warning of the intent to pass is not negligence per se, if there is evidence tending to show circumstances which would support a finding that a reasonably prudent person under similar conditions would not have attempted to pass without sounding his horn and that defendant driver failed to do so, and that such failure was a proximate cause of the accident, the issue of negligence is for the determination of the jury. *McPherson v. Haire*, 262 N.C. 71, 136 S.E.2d 224 (1964).

**But Motorist Not Relieved of All Duty to Give Warning.**—The 1959 amendment of subsection (b) does not mean that an overtaking and passing motorist is relieved of all duty to give audible warning; it simply means that a failure to give such warning may or may not constitute a want of due care, depending upon the circumstances of the particular case. *Cowan v. Murrows Transfer, Inc.*, 262 N.C. 550, 138 S.E.2d 228 (1964).

**Where Driver of Forward Vehicle Has Signaled Intention to Turn Left.**—Where the driver of a preceding vehicle traveling in the same direction gives a clear signal of his intention to turn left into an intersecting road and leaves sufficient space to his right to permit the overtaking vehicle to pass in safety, the provisions of subsection (a) of this section do not apply, and the overtaking vehicle may pass to the right of the overtaken vehicle, but this rule does not relieve the driver of the overtaking vehicle of the duty of observing other pertinent statutes, including the duty to give audible warning of his intention to pass as required by subsection (b) of this section. *Ward v. Cruse*, 236 N.C. 400, 72 S.E.2d 835 (1952).

**Where Driver of Forward Vehicle Fails to Signal Intention to Turn Left.**—Though the forward driver fails to signal before making a left turn, yet the driver overtaking and passing the forward driver may be guilty of contributory negligence for not complying with this section. *Lyerly v. Griffin*, 237 N.C. 686, 75 S.E.2d 730 (1953).

Where the driver of the stopped truck has given no clear signal of his intention to make a left turn, but the truck standing



on the right of the highway merely has on the left rear and left fender a red light flashing on and off, it would seem that the driver of an automobile approaching at night from the rear, in the exercise of ordinary care, is bound to approach with his automobile under control, so as to reduce his speed or stop, if necessary, to avoid injury. *Weavil v. C. W. Myers Trading Post, Inc.*, 245 N.C. 106, 95 S.E.2d 533 (1956).

While plaintiff's evidence that he did not hear the car which attempted to pass him was sufficient to establish a violation of this section and hence, prior to the 1959 amendment, was sufficient to justify an affirmative answer to the issue of negligence notwithstanding defendant's positive testimony that the horn was sounded, it was manifest that plaintiff's admitted violation of § 20-154 in making a "U" turn to his left without ascertaining that he could do so in safety and without giving the required signal was a proximate cause of the collision justifying a nonsuit against him. *Tallent v. Talbert*, 249 N.C. 149, 105 S.E.2d 426 (1958).

**No Duty to Sound Horn in Business or Residential District.**—The driver of the defendant's truck was under no duty to sound his horn before passing or attempting to pass a vehicle proceeding in the same direction in another lane, while traveling within a business or residential district. *Schloss v. Hallman*, 255 N.C. 686, 122 S.E.2d 513 (1961).

In a business district of a city, the requirement of this section that the driver of the following vehicle shall sound his horn before attempting to pass does not apply. *Ervin v. Cannon Mills Co.*, 233 N.C. 415, 64 S.E.2d 431 (1951).

**Warning Must Be Given in Reasonable Time.**—The warning required by this section must be given to the driver of the vehicle in front in reasonable time to avoid injury which would probably result from a left turn. *Sheldon v. Childers*, 240 N.C. 449, 82 S.E.2d 396 (1954); *Boykin v. Bisette*, 260 N.C. 295, 132 S.E.2d 616 (1963).

The duty imposed by this section upon the driver of the overtaking vehicle to sound his horn before attempting to pass must be regarded as requiring that warning be given to the driver of the vehicle being overtaken in reasonable time to avoid injury which would likely result from a left turn. In the absence of such warning from the driver of the overtaking vehicle, knowledge of his intention to pass may not be ascribed to the driver of the

forward vehicle, and the duty rests upon him who is attempting to pass another vehicle proceeding in the same direction on the highway to observe this section and to exercise due care to see that he can pass in safety. *Lyerly v. Griffin*, 237 N.C. 686, 75 S.E.2d 730 (1953).

**Vehicle Need Not Pass Two Feet to Left of Center Line.**—Subsection (a) of this section does not require that a vehicle must pass at least two feet to the left of the center line of the highway in passing another vehicle traveling in the same direction, but only that it pass at least two feet to the left of the other vehicle. *Eason v. Grimsley*, 255 N.C. 494, 121 S.E.2d 885 (1961).

**The rule of the road set out in § 20-152 does not apply** where one motorist is overtaking and passing another, as authorized by § 20-149, or where there are two lanes available to the motorist and the forward vehicle is in the outer lane and the overtaking vehicle is in the passing lane. *Mad-dox v. Brown*, 232 N.C. 542, 61 S.E.2d 613 (1950).

**A person walking along a public highway pushing a handcart is a pedestrian** within the purview of § 20-174 (d) and is not a driver of a vehicle within the meaning of § 20-146 and this section. *Lewis v. Watson*, 229 N.C. 20, 47 S.E.2d 484 (1948).

**Contributory Negligence as Question for Jury.**—The evidence tended to show that plaintiff's vehicle was following that of defendant, that defendant's truck slowed down and pulled to its left of the highway, that a person in the rear of the truck motioned plaintiff's driver to go ahead, and that as plaintiff's vehicle started to pass defendant's vehicle on its right, the driver of defendant's truck turned right to enter a private driveway, and the two vehicles collided. It was held that nonsuit on the ground of contributory negligence was erroneously entered, since, whether plaintiff's driver was guilty of contributory negligence in attempting to pass defendant's vehicle on the right is a question for the determination of the jury under the circumstances. *Levy v. Carolina Aluminum Co.*, 232 N.C. 158, 59 S.E.2d 632 (1950).

**Evidence Sufficient to Raise Issue of Last Clear Chance.**—Where the evidence tended to show that plaintiff, in order to avoid striking a chicken standing on the hard surface of the highway, drove his automobile gradually to the left, so that the car was traveling in about the center of the highway at the time of the accident in suit, and that a bus belonging to defendant was traveling in the same direction and hit plaintiff's car when the bus at-



tempted to pass, it was held that, conceding plaintiff was negligent in driving to the left without giving any signal or ascertaining if the car could be driven to the left in safety, defendant's motion to nonsuit was erroneously granted, since the pleadings and evidence are sufficient to raise the issue of the last clear chance upon the evidence tending to establish defendant's negligence in failing to keep a safe distance between the vehicles and in failing to take the precautions and give the signals required by this section for passing cars on the highway. *Morris v. Seashore Transp. Co.*, 208 N.C. 807, 182 S.E. 487 (1935).

**Instruction Embracing Requirements of Section Held Error.**—In an action involving the alleged negligence of defendant in failing to yield to plaintiff's intestate one-half the highway as the respective vehicles, traveling in opposite directions, passed each other, an instruction embracing the statutory duty of a driver of a vehicle overtaking and passing another vehicle traveling in the same direction is prejudicial error. *Lookabill v. Regan*, 245 N.C. 500, 96 S.E.2d 421 (1957).

§ 20-150. **Limitations on privilege of overtaking and passing.**—(a) The driver of a vehicle shall not drive to the left side of the center of a highway, in overtaking and passing another vehicle proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety.

(b) The driver of a vehicle shall not overtake and pass another vehicle proceeding in the same direction upon the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed within a distance of five hundred feet.

(c) The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any steam or electric railway grade crossing nor at any intersection of highway unless permitted so to do by a traffic or police officer. For the purposes of this section the words "intersection of highway" shall be defined and limited to intersections designated and marked by the State Highway Commission by appropriate signs, and street intersections in cities and towns.

(d) The driver of a vehicle shall not drive to the left side of the center line of a highway upon the crest of a grade or upon a curve in the highway where such center line has been placed upon such highway by the State Highway Commission, and is visible.

(e) The driver of a vehicle shall not overtake and pass another on any portion of the highway which is marked by signs or markers placed by the State Highway Commission stating or clearly indicating that passing should not be attempted. (1937, c. 407, s. 112; 1955, c. 862; c. 913, s. 2; 1957, c. 65, s. 11.)

**Editor's Note.**—Some of the cases cited below were decided under the corresponding provisions of the former law.

**No rule of law compels one vehicle to travel indefinitely behind the other.** *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**And no rule gives one the unqualified**

Where the uncontroverted evidence supports a finding that the driver of the defendant's car violated subsection (a) of this section as to the duty of the driver of an overtaking vehicle, but there is neither allegation nor evidence that such violation was a proximate cause of the collision, an instruction based on that subsection is erroneous and prejudicial. *McGinnis v. Robinson*, 252 N.C. 574, 114 S.E.2d 365 (1960).

**Applied in** *State v. Holbrook*, 228 N.C. 620, 46 S.E.2d 843 (1948); *Clifton v. Turner*, 257 N.C. 92, 125 S.E.2d 339 (1962); *Pate v. Hair*, 208 F. Supp. 455 (W.D.N.C. 1962); *Bass v. Roberson*, 261 N.C. 125, 134 S.E.2d 157 (1964); *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**Cited in** *Citizens Nat'l Bank v. Phillips*, 236 N.C. 470, 73 S.E.2d 323 (1952); *Harris v. Davis*, 244 N.C. 579, 94 S.E.2d 649 (1956); *Rudd v. Stewart*, 255 N.C. 90, 120 S.E.2d 601 (1961); *Porter v. Philyaw*, 204 F. Supp. 285 (W.D.N.C. 1962); *Caudill v. Nationwide Mut. Ins. Co.*, 264 N.C. 674, 142 S.E.2d 616 (1965).

**right to overtake and pass the other.** *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**Statutes of this kind have no application to multiple lane highways.** *Byerly v. Shell*, 312 F.2d 141 (4th Cir. 1962).

The provisions of subsections (d) and (e) were plainly not intended to apply to

multiple highways which furnish parallel lanes on which vehicles moving in the same direction may pass without encountering traffic coming from the opposite direction. *Byerly v. Shell*, 312 F.2d 141 (4th Cir. 1962).

That multiple-lane highways were not within the contemplation of the North Carolina legislature when this section was passed is indicated by subsections (d) and (e) of this section which provide that the driver of a vehicle shall not drive to the left side of the center of the highway upon the crest of a grade or upon a curve in the highway and that a driver of a vehicle shall not pass another vehicle on any part of the highway marked by prohibitory signs placed by the State Highway Commission. *Byerly v. Shell*, 312 F.2d 141 (4th Cir. 1962).

**And It Is Not Negligence to Pass at Intersection on Dual Highway.** — Under the proper interpretation of the North Carolina statutes, it is not unlawful and negligent per se for one vehicle to pass another at an intersection on a dual highway. *Byerly v. Shell*, 312 F.2d 141 (4th Cir. 1962).

**But the exercise of careful lookout is especially indicated on a highway having a passing lane.** *State v. Fuller*, 259 N.C. 111, 130 S.E.2d 61 (1963).

**Negligence Per Se.**—It is negligence per se for the operator of a motor vehicle to overtake and pass another vehicle traveling in the same direction at a railroad grade crossing. *Murray v. Atlantic Coast Line R.R.*, 218 N.C. 392, 11 S.E.2d 326 (1940).

It is negligence per se for a motorist to overtake and pass another vehicle proceeding in the same direction at an intersection of a highway, unless permitted to do so by a traffic officer. *Donivant v. Swain*, 229 N.C. 114, 47 S.E.2d 707 (1948); *Cole v. Fletcher Lumber Co.*, 230 N.C. 616, 55 S.E.2d 86 (1949); *Ferris v. Whitaker*, 123 F. Supp. 356 (E.D.N.C. 1954); *Adams v. Godwin*, 252 N.C. 471, 114 S.E.2d 76 (1960).

**As to violation of subsection (c) being negligence per se**, see *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

A violation of this section, relating to the limitations on privilege of overtaking and passing another vehicle, is negligence per se, and, if injury proximately results therefrom, the injured party is entitled to recover. *Johnson v. Harris*, 166 F. Supp. 417 (M.D.N.C. 1958); *Rouse v. Jones*, 254 N.C. 575, 119 S.E.2d 628 (1961).

**A private driveway is not an intersecting highway** within the meaning of subsection

(c) of this section. *Levy v. Carolina Aluminum Co.*, 232 N.C. 158, 59 S.E.2d 632 (1950); *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**Litigation between Overtaking Motorist and Driver of Overtaken Vehicle.**—

Although this section is designed primarily to prevent collision between an overtaking automobile and a vehicle coming from the opposite direction, its provisions are germane to litigation between an overtaking motorist and the driver of an overtaken vehicle if there is evidence to the effect that the underlying accident was occasioned by an unsuccessful effort on the part of the former to pass the latter upon a marked curve. The driver of the overtaken vehicle is certainly not required in such case to anticipate that the latter will attempt to pass in violation of the section. *Walker v. American Bakeries Co.*, 234 N.C. 440, 67 S.E.2d 459 (1951).

**Subsections (b) and (d) of this section are harmonious rather than conflictive.** They are not designed to regulate the behaviour of the operator of an overtaking automobile in any event unless he is traveling upon a curve in the highway. Whether the one statutory regulation or the other applies to the driver of an overtaking vehicle proceeding upon a curve in the highway depends on whether the curve is marked by a visible center line placed upon the highway by the State Highway Commission. Where the curve is so marked, the action of the operator of the overtaking automobile is governed by subdivision (d), which forbids him to drive to the left side of the center line in order to pass the overtaken vehicle; and where the curve is not so marked, the conduct of the driver of the overtaking automobile is controlled by subdivision (b), which permits him to pass the overtaken vehicle unless his view along the highway is obstructed within a distance of five hundred feet. *Walker v. American Bakeries Co.*, 234 N.C. 440, 67 S.E.2d 459 (1951).

**The meaning of subsection (c) of this section** is that one motorist may not pass another going in the same direction under either of two conditions: (1) At any place designated and marked by the State Highway Commission as an intersection; (2) at any street intersection in any city or town. *Adams v. Godwin*, 252 N.C. 471, 114 S.E.2d 76 (1960).

**An intersection under subsection (c) of this section must be designated and marked by the Highway Commission by appropriate signs, and overtaking and passing another vehicle at "a crossover" is not a violation of this section, and there-**



fore not negligence per se. *Bennet v. Livingston*, 250 N.C. 586, 108 S.E.2d 843 (1959).

**Evidence Sufficient to Show Violation of This Section.**—The evidence tended to show that the driver of an automobile overtook and attempted to pass a truck proceeding in the same direction at an intersection of streets in a municipality at which no traffic officer was stationed, and that the vehicle collided when the driver of the truck made a left turn at the intersection. Held: It was error for the court to instruct the jury that the provisions of subsection (c) of this section did not apply. *Donivant v. Swain*, 229 N.C. 114, 47 S.E.2d 707 (1948).

Evidence tending to show that the driver of a truck was traveling 35 to 40 miles per hour in an early morning fog which limited visibility to 100 or 126 feet, that he had overtaken a vehicle traveling in the same direction and was attempting to pass such vehicle 250 or 300 feet before reaching a curve, and collided with plaintiff's car which approached from the opposite direction, was held sufficient to be submitted to the jury on the issue of the negligence of the driver of the truck. *Winfield v. Smith*, 230 N.C. 392, 53 S.E.2d 251 (1949).

Evidence held to show violation of this section and to warrant submission to the jury of the issue of defendants' negligence. *Winfield v. Smith*, 230 N.C. 392, 53 S.E.2d 251 (1949).

**Sufficient Evidence to Submit Question of Negligence to Jury.**—Evidence that the driver of a truck, in attempting to pass cars going in the same direction, pulled out in the center of the road and hit the car which plaintiff was driving in the opposite direction, causing damage to the car and injury to plaintiff, was held sufficient to be submitted to the jury on the question of the actionable negligence of the driver of the truck. *Joyner v. Dail*, 210 N.C. 663, 188 S.E. 209 (1936).

**Contributory Negligence as Barring Recovery.**—Even though the driver of a truck which collided with plaintiff's automobile failed to observe certain statutory requirements, where the evidence is equally clear in showing that the collision occurred when plaintiff was attempting to overtake and pass the truck proceeding in the same direction at a highway intersection, without permission so to do by a traffic or police officer, in violation of this section, contributory negligence on the part of the plaintiff bars recovery. *Cole v. Fletcher Lumber Co.*, 230 N.C. 616, 55 S.E.2d 86 (1949).

Where plaintiff's evidence tended to show that he started passing a truck 275 feet from an intersection, nonsuit on the

ground that plaintiff was contributorily negligent in attempting to pass at an intersection was properly denied, since the evidence was susceptible to the inference that plaintiff could have passed the truck before it reached the intersection had not the driver of the truck turned suddenly to the left 75 feet from the intersection in "cutting the corner." *Howard v. Bingham*, 231 N.C. 420, 57 S.E.2d 401 (1950).

Nonsuit on the ground of contributory negligence was erroneously entered, since on such motion only plaintiff's evidence should be considered, and since plaintiff's evidence did not compel the inference that his negligence contributed as a proximate cause to his injury and damage. *Pruett v. Inman*, 252 N.C. 520, 114 S.E.2d 360 (1960).

**Area of Special Hazard.**—Attempt of truck driver to pass backfiller tractor travelling in same direction in area of special hazard held not negligence as a matter of law under the circumstances, but truck driver's negligence and contributory negligence of tractor driver were questions for the jury. *Sloan v. Glenn*, 245 N.C. 55, 95 S.E.2d 81 (1956).

**Same—Notice.** — Signs in construction area marked "One Way Road," "Slow" and "Men Working," the presence of dirt piled along the highway and a ditch-digging machine at work on side of the highway constituted notice to driver of oil transport truck that he was approaching a zone of special hazard. *Sloan v. Glenn*, 245 N.C. 55, 95 S.E.2d 81 (1956).

**Purpose of Yellow Lines.**—Yellow lines are designed primarily to prevent collision between an overtaking and passing automobile and a vehicle coming from the opposite direction, and to protect occupants of other cars, pedestrians and property on the highway. *Rushing v. Polk*, 258 N.C. 256, 128 S.E.2d 675 (1962); *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**Presence and crossing of yellow line are evidential details in the totality of circumstances in a case.** *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**Overtaking and Passing at Highway Intersection as Negligence.** — This section prohibits a motorist from overtaking and passing at highway intersections, and the violation of this section is negligence. *Crotts v. Overnite Transp. Co.*, 246 N.C. 420, 98 S.E.2d 502 (1957).

In the case of a two-lane roadway in which traffic moves in both directions, the need to prohibit passing at intersections is obvious since the driver in the rear may



reasonably anticipate that the car in the lead may desire to turn to the left. To such a situation the statute clearly applies. *Byerly v. Shell*, 312 F.2d 141 (4th Cir. 1962).

**Evidence Sufficient to Show Violation of Subsection (d).**—See *State v. Goins*, 233 N.C. 460, 64 S.E.2d 289 (1951).

**Evidence Insufficient to Show Violation of Section.**—Evidence held not to compel the conclusion that plaintiff's driver attempted to pass defendant's vehicle at an intersection in violation of this section. *Carolina Cas. Ins. Co. v. Cline*, 238 N.C. 133, 76 S.E.2d 374 (1953).

**Negligence Proximate Cause of Collision.**—A collision occurred when an overtaking motorist attempted to pass a truck while the latter was making a left turn at an intersection, without passing "beyond the center of the intersection" as required by § 20-153. It was held that the act of the motorist in violating subsection (c) of this section was the sole proximate cause of the collision. *Ferris v. Whitaker*, 123 F. Supp. 356 (E.D.N.C. 1954).

**§ 20-150.1. When passing on the right is permitted.**—The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

- (1) When the vehicle overtaken is in a lane designated for left turns;
- (2) Upon a street or highway with unobstructed pavement of sufficient width which have been marked for two or more lanes of moving vehicles in each direction and are not occupied by parked vehicles;
- (3) Upon a one-way street, or upon a highway on which traffic is restricted to one direction of movement when such street or highway is free from obstructions and is of sufficient width and is marked for two or more lanes of moving vehicles which are not occupied by parked vehicles;
- (4) When driving in a lane designating a right turn on a red traffic signal light. (1953, c. 679.)

**Editor's Note.**—For brief comment on this section, see 31 N.C.L. Rev. 418 (1953).

**Applied in** *Schloss v. Hallman*, 255 N.C. 686, 122 S.E.2d 513 (1961).

**§ 20-151. Driver to give way to overtaking vehicle.**—The driver of a vehicle about to be overtaken and passed by another vehicle approaching from the rear shall, unless the overtaking and passing is being made upon the right as permitted in § 20-150.1, give way to the right in favor of the overtaking vehicle on suitable and audible signal being given by the driver of the overtaking vehicle. In any event the driver of the overtaken vehicle shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. (1937, c. 407, s. 113; 1955, c. 913, s. 4.)

**Editor's Note.**—Some of the cases treated below were decided under the corresponding provisions of the earlier law, but should be of assistance in the interpretation of the present section.

**A violation of this section is negligence per se.** *Rouse v. Jones*, 254 N.C. 575, 119 S.E.2d 628 (1961).

**Duty of Driver of Overtaken Car.**—The driver of an overtaken car was driving in

**Instruction Erroneous as Nullifying Provisions of Section.**—See *Walker v. American Bakeries Co.*, 234 N.C. 440, 67 S.E.2d 459 (1951).

**Applied in** *Bass v. Roberson*, 261 N.C. 125, 134 S.E.2d 157 (1964); *Taney v. Brown*, 262 N.C. 438, 137 S.E.2d 827 (1964); *Knight v. Seymour*, 263 N.C. 790, 140 S.E.2d 410 (1965).

**Stated in** *Tysinger v. Coble Dairy Prods.*, 225 N.C. 717, 36 S.E.2d 246 (1945).

**Cited in** *State v. Palmer*, 197 N.C. 135, 147 S.E. 817 (1929); *Cook v. Horne*, 198 N.C. 739, 153 S.E. 315 (1930); *Queen City Coach Co. v. Lee*, 218 N.C. 320, 11 S.E.2d 341 (1940); *Citizens Nat'l Bank v. Phillips*, 236 N.C. 470, 73 S.E.2d 323 (1952); *Sheldon v. Childers*, 240 N.C. 449, 82 S.E.2d 396 (1954) (as to subsection (c)); *Kirkman v. Baucom*, 246 N.C. 510, 98 S.E.2d 922 (1957); *McGinnis v. Robinson*, 252 N.C. 574, 114 S.E.2d 365 (1960); *Bundy v. Belue*, 253 N.C. 31, 116 S.E.2d 200 (1960); *McPherson v. Haire*, 262 N.C. 71, 136 S.E.2d 224 (1964).

the proper lane at approximately the maximum lawful speed, but there was evidence that when an overtaking car drew abreast his car it was apparent that the overtaking vehicle was in a position of peril by reason of the near approach of a meeting vehicle. The driver of the overtaken car did not reduce speed but accelerated his speed and raced the passing car. Under the circumstances thus presented, it was the duty of

the driver of the overtaken car not to increase the speed of his car until the overtaking car had completely passed. *Rouse v. Jones*, 254 N.C. 575, 119 S.E. 628 (1961).

**Degree of Care in Observing Traffic in Rear.**—The driver of an auto-truck along a public highway is not held to the same degree of care in observing those who may wish to pass him coming from the rear, as in front, and is not required to turn to the right for such purpose, unless he is appraised by the one who wishes to pass, by proper signal, of his intention to do so. *Dreher v. Divine*, 192 N.C. 325, 135 S.E. 29 (1926).

**Duty to Turn to Right.**—The driver of an automobile upon the signal of a faster car approaching from the rear, must turn to the right so that the other may pass to his left, when the conditions existing there at the time are reasonably safe to permit the other to pass. *Dreher v. Divine*, 192 N.C. 325, 135 S.E. 29 (1926).

**When Question One of Reasonable Prudence.**—Where the driver of an automobile violates the statutes by turning to the right to avoid a motorcycle traveling in the same direction upon a public road, and collides therewith, and action is brought to recover damages therefor, and the evidence is conflicting as to whether the motorcycle was unexpectedly turned out in the wrong direction, resulting in the injury, the question of proximate cause depends upon whether the driver of the automobile acted with reasonable prudence under the circumstances, to avoid the injury, or whether the collision was caused by the wrongful and unexpected act of the one on the motorcycle. *Cooke v. Jerome*, 172 N.C. 626, 90 S.E. 767 (1916).

**Duty of Passer from Rear.**—The driver of an automobile who wishes to pass another ahead of him, must keep his automobile under control, so as to avoid a collision if the driver ahead of him apparently does not hear his signals or is not aware of his intention to pass, or the condition of the road makes it unsafe not only to himself, but to those who are driving from the opposite direction. *Dreher v. Divine*, 192 N.C. 325, 135 S.E. 29 (1926).

**§ 20-152. Following too closely.**—(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, with regard for the safety of others and due regard to the speed of such vehicles and the traffic upon and condition of the highway.

(b) The driver of any motor truck, when travelling upon a highway outside of a business or residence district, shall not follow another motor truck within

**Proof of Violation in Trial for Resulting Crime.**—See *State v. Rountree*, 181 N.C. 535, 106 S.E. 669 (1921); *State v. Jessup*, 183 N.C. 771, 111 S.E. 523 (1922).

**Same—Violation as Evidence of Intent to Assault.**—Since the intentional driving of a motor vehicle on the wrong side of the road in disregard of the statute is *malum prohibitum*, not *malum in se*, the performance of this unlawful act is not evidence of a specific intent to commit an assault. *State v. Rawlings*, 191 N.C. 265, 131 S.E. 632 (1926).

**Act Must Have Been Likely to Cause Harm.**—One who violated the provisions of this section, not intentionally or recklessly, but merely through a failure to exercise due care and thereby proximately caused the death would not be culpably negligent unless in the light of the attendant circumstances his negligent act was likely to result in death or bodily harm. *State v. Stansell*, 203 N.C. 69, 164 S.E. 580 (1932).

**Questions for Jury.**—Where there was evidence that the plaintiff, desiring to pass a truck on the highway going in the same direction, blew his horn, and that the driver of the truck heard the signal, but instead of driving to the right of the center of the road to allow the plaintiff to pass on the left, drove to the left and stopped or came almost to a stop, that the plaintiff, thinking that the truck was going to stop, and having his car under control, attempted to pass on the right, when the truck suddenly turned to the right, forcing the plaintiff to turn to the right to avoid hitting the truck, causing the plaintiff's car to run off the embankment on the right of the road, resulting in the injury in suit: Held, the evidence should have been submitted to the jury upon issues of negligence, contributory negligence and damages. *Stevens v. Rostan*, 196 N.C. 314, 145 S.E. 555 (1928).

**Applied in** *Cole v. Fletcher Lumber Co.*, 230 N.C. 616, 55 S.E.2d 86 (1949); *Queen v. Jarrett*, 258 N.C. 405, 128 S.E.2d 894 (1963); *Pate v. Hair*, 208 F. Supp. 455 (W.D.N.C. 1962).

**Cited in** *Jones v. C. B. Atkins Co.*, 259 N.C. 655, 131 S.E.2d 371 (1963).

three hundred feet, but this shall not be construed to prevent one motor truck overtaking and passing another. (1937, c. 407, s. 114; 1949, c. 1207, s. 4.)

**Subsection (a) of this section is a statutory declaration of the common law** that the driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, with regard for the safety of others and due regard to the speed of such vehicles and the traffic upon and condition of the highway. *Black v. Gurley Milling Co.*, 257 N.C. 730, 127 S.E.2d 515 (1962).

**The rule of the road set out in this section does not apply** where one motorist is overtaking and passing another, as authorized by § 20-149, or where there are two lanes available to the motorist and the forward vehicle is in the outer lane and the overtaking vehicle is in the passing lane. *Maddox v. Brown*, 232 N.C. 542, 61 S.E.2d 613 (1950).

**Negligence Per Se.**—A violation of subsection (a) would be negligence per se, and, if injury proximately results therefrom, it would be actionable. *Murray v. Atlantic Coast Line R.R.*, 218 N.C. 392, 11 S.E.2d 326 (1940); *Smith v. Rawlins*, 253 N.C. 67, 116 S.E.2d 184 (1960); *Fox v. Hollar*, 257 N.C. 65, 125 S.E.2d 334 (1962); *Hamilton v. McCash*, 257 N.C. 611, 127 S.E.2d 214 (1962); *Gowens v. Morgan & Sons Poultry Co.*, 238 F. Supp. 399 (M.D.N.C. 1964).

A violation of this section is negligence per se. *Burnett v. Corbett*, 264 N.C. 341, 141 S.E.2d 468 (1965).

The driver of a motor vehicle is negligent if he violates the requirement of subsection (a) of this section, and his negligence in that particular is actionable if it proximately causes injury to the person or property of another. *Cozart v. Hudson*, 239 N.C. 279, 78 S.E.2d 881 (1954).

A motorist is prohibited by this section from following another vehicle more closely than is reasonable and prudent under the circumstances with regard to the traffic and condition of the highway, and the violation of this section is negligence. *Crotts v. Overnite Transp. Co.*, 246 N.C. 420, 98 S.E.2d 502 (1957).

**Contributory Negligence.**—In *Killough v. Williams*, 224 N.C. 254, 29 S.E.2d 697 (1944), plaintiff was held not guilty of contributory negligence in following too closely in the rear of a truck with which he collided.

**Charge to Jury.**—Where the court, in its charge on contributory negligence, does not call attention to this section, an exception to the charge will not be sustained in

the absence of a special request for such instructions. *Alexander v. Southern Pub. Util. Co.*, 207 N.C. 438, 177 S.E. 427 (1934), decided under corresponding provisions of the former law.

**Section Inapplicable to Act of Passing.**—

If the defendant were in the act of passing, then this section would have no application and provide no standard by which the court might judge. *Gowens v. Morgan & Sons Poultry Co.*, 238 F. Supp. 399 (M.D.N.C. 1964).

**Inferences from Fact of Collision.**—

Ordinarily the mere fact of a collision with the vehicle ahead furnishes some evidence that the motorist to the rear was not keeping a proper lookout or that he was following too closely. *Burnett v. Corbett*, 264 N.C. 341, 141 S.E.2d 468 (1965).

**Sudden Peril.**—If the peril suddenly confronting a defendant is due to his failure to keep a safe distance behind another vehicle and maintain a proper lookout, the fact that care was exercised after discovery of the peril would not excuse the negligent conduct. *Gowens v. Morgan & Sons Poultry Co.*, 238 F. Supp. 399 (M.D.N.C. 1964).

**The condition and effectiveness of his brakes must be taken into consideration** by a motorist in determining what is a safe distance and a safe speed at which he may follow another vehicle. *Crotts v. Overnite Transp. Co.*, 246 N.C. 420, 98 S.E.2d 502 (1957).

**Vehicles Stopping One Behind the Other.**—

The statutory prohibition against following too closely a vehicle traveling in the same direction has no application to the distance between vehicles stopping one behind another on the highway. There is no prescribed distance within which one car must stop behind another stopped car. *Royal v. McClure*, 244 N.C. 186, 92 S.E.2d 762 (1956).

**Applied in** *State v. Holbrook*, 228 N.C. 620, 46 S.E.2d 843 (1948); *Pacific Fire Ins. Co. v. Sistrunk Motors, Inc.*, 241 N.C. 67, 84 S.E.2d 301 (1954); *Hall v. Little*, 262 N.C. 618, 138 S.E.2d 282 (1964); *Brown v. Hale*, 263 N.C. 176, 139 S.E.2d 210 (1964).

**Stated in** *State v. Steelman*, 228 N.C. 634, 46 S.E.2d 845 (1948).

**Cited in** *Hobbs v. Mann*, 199 N.C. 532, 155 S.E. 163 (1930); *Smith v. Carolina Coach Co.*, 214 N.C. 314, 199 S.E. 90 (1938); *Clifton v. Turner*, 257 N.C. 92,



125 S.E.2d 339 (1962); *Dunlap v. Lee*, v. C. B. Atkins Co., 259 N.C. 655, 131 S.E.2d 447, 126 S.E.2d 62 (1962); *Jones* S.E.2d 371 (1963).

**§ 20-153. Turning at intersection.**—(a) Except as otherwise provided in this section, the driver of a vehicle intending to turn to the right at an intersection shall approach such intersection in the lane for traffic nearest to the right-hand side of the highway, and in turning shall keep as closely as practicable to the right-hand curb or edge of the highway, and when intending to turn to the left shall approach such intersection in the lane for the traffic to the right of and nearest to the center of the highway, and in turning shall pass beyond the center of the intersection, passing as closely as practicable to the right thereof before turning such vehicle to the left. When a vehicle is being operated on a three-lane street or highway, the driver thereof intending to turn to the left at an intersection shall approach the intersection in the lane nearest to the center of the highway and designated for use by vehicles traveling in the same direction as the vehicle about to turn.

(b) For the purpose of this section, the center of the intersection shall mean the meeting point of the medial lines of the highways intersecting one another.

(c) Local authorities in their respective jurisdiction may modify the foregoing method of turning at intersections by clearly indicating by buttons, markers or other direction signs within an intersection the course to be followed by vehicles turning thereat, and it shall be unlawful for any driver to fail to turn in a manner as so directed when such direction signs are authorized by local authorities. (1937, c. 407, s. 115; 1955, c. 913, s. 5.)

**Provision Intended for Protection of Vehicle Coming in from Left on Intersecting Road.**—This section which requires that the driver of a vehicle when intending to turn to the left shall pass beyond the center of the intersection is intended for the protection of a vehicle coming in from the left on the intersecting road. *Ferris v. Whitaker*, 123 F. Supp. 356 (E.D.N.C. 1954).

**When a motorist approaches from the rear a vehicle standing in the left-turn lane**, he has the right to assume that the driver of that vehicle will turn to the left upon the change of traffic signal. He has the right, and it is his duty, to pass the vehicle on its right. *Anderson v. Talman Office Supplies*, 234 N.C. 142, 66 S.E.2d 677 (1951). See *Anderson v. Talman Office Supplies*, 236 N.C. 519, 73 S.E.2d 141 (1952).

**A violation of subsection (a) is negligence per se** and if injury proximately results therefrom, violation is actionable. *Tarrant v. Pepsi-Cola Bottling Co.*, 221 N.C. 390, 20 S.E.2d 565 (1942); *Simmons v. Rogers*, 247 N.C. 340, 100 S.E.2d 849 (1957); *Pearsall v. Duke Power Co.*, 258 N.C. 639, 129 S.E.2d 217 (1963).

**Negligence Not Proximate Cause of Collision.**—A collision occurred when an overtaking motorist attempted to pass a truck while the latter was making a left turn at an intersection, without passing "beyond the center of the intersection" as required by § 20-153. It was held that the

act of the motorist in violating § 20-150 (c), prohibiting an overtaking driver from passing at an intersection, was the sole proximate cause of the collision. *Ferris v. Whitaker*, 123 F. Supp. 356 (E.D.N.C. 1954).

**Circumstances Warranting Inference of Negligence.**—The plaintiff was lawfully in an intersection, standing in a position where he was clearly visible to the driver of the defendant's taxicab as the latter approached the intersection. The taxi driver, had he been keeping a proper lookout, could have seen plaintiff in ample time to avoid a collision. Instead he "cut the corner" in violation of subsection (a) of this section without giving any signal or warning of his approach. A collision resulted. These circumstances, unrebutted, warranted an inference of negligence and were sufficient to require the submission of appropriate issues to the jury. *Ward v. Bowles*, 228 N.C. 273, 45 S.E. 2d 354 (1947).

**Inferences from Fact of Collision.**—The principle that the mere fact of a collision with a vehicle ahead furnishes some evidence that the following motorist was negligent as to speed, was following too closely, or failed to keep a proper lookout is not absolute; the negligence, if any, depends upon the circumstances. *Powell v. Cross*, 263 N.C. 764, 140 S.E.2d 393 (1965).

**Question for Jury.**—If plaintiff violated this section by turning left without passing beyond the center of the intersection and was guilty of contributory negligence

per se, it was for the jury to say whether such negligence proximately caused or contributed to plaintiff's injuries and damage, bearing in mind that reasonable foreseeability is an essential element of proximate cause. *White v. Lacey*, 245 N.C. 364, 96 S.E.2d 1 (1957).

**Charge to Jury.** — When the failure to explain the law so the jury could apply it to the facts is specifically called to the court's attention by a juror's request for information, it should tell the jury how to find the intersection of the streets as fixed by subdivision (5) of § 20-38 and how, when the motorist reaches the intersection,

he is required to drive in making a left turn. *Pearsall v. Duke Power Co.*, 258 N.C. 639, 129 S.E.2d 217 (1963).

**Applied in** *Cole v. Fletcher Lumber Co.*, 230 N.C. 616, 55 S.E.2d 86 (1949).

**Quoted in** *Ervin v. Cannon Mills Co.*, 233 N.C. 415, 64 S.E.2d 431 (1951).

**Cited in** *Smith v. United States*, 94 F. Supp. 681 (W.D.N.C. 1951); *Hudson v. Transit Co.*, 250 N.C. 435, 108 S.E.2d 900 (1959); *Ray v. French Broad Elec. Membership Corp.*, 252 N.C. 380, 113 S.E.2d 806 (1960); *McPherson v. Haire*, 262 N.C. 71, 136 S.E.2d 224 (1964).

**§ 20-154. Signals on starting, stopping or turning.**—(a) The driver of any vehicle upon a highway before starting, stopping or turning from a direct line shall first see that such movement can be made in safety, and if any pedestrian may be affected by such movement shall give a clearly audible signal by sounding the horn, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal as required in this section, plainly visible to the driver of such other vehicle, of the intention to make such movement.

(b) The signal herein required shall be given by means of the hand and arm in the manner herein specified, or by any mechanical or electrical signal device approved by the Department, except that when a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, the signal shall be given by a device of a type which has been approved by the Department: Provided that in the case of any motor vehicle manufactured or assembled after July 1, 1953 the signal device with which such motor is equipped shall be presumed prima facie to have been approved by the Commissioner of Motor Vehicles. Irrespective of the date of manufacture of any motor vehicle a certificate from the Commissioner of Motor Vehicles to the effect that a particular type of signal device has been approved by his Department shall be admissible in evidence in all the courts of this State.

Whenever the signal is given the driver shall indicate his intention to start, stop, or turn by extending the hand and arm from and beyond the left side of the vehicle as hereinafter set forth.

Left turn—hand and arm horizontal, forefinger pointing.

Right turn—hand and arm pointed upward.

Stop—hand and arm pointed downward.

All hand and arm signals shall be given from the left side of the vehicle and all signals shall be maintained or given continuously for the last one hundred feet traveled prior to stopping or making a turn. Provided, that in all areas where the speed limit is 45 miles per hour or higher and the operator intends to turn from a direct line of travel, a signal of intention to turn from a direct line of travel shall be given continuously during the last 200 feet traveled before turning; and provided further that the violation of this section shall not constitute negligence per se.

Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, a signal lamp or lamps or mechanical signal device when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles except combinations operated by farmers in hauling farm products.

(c) No person shall operate over the highways of this State a right-hand



drive motor vehicle or a motor vehicle equipped with the steering mechanism on the right-hand side thereof unless said motor vehicle is equipped with mechanical or electrical signal devices by which the signals for left turns and right turns may be given. Such mechanical or electrical devices shall be approved by the Department. (1937, c. 407, s. 116; 1949, c. 1016, s. 1; 1951, cc. 293, 360; 1955, c. 1157, s. 9; 1957, c. 488, s. 2; 1965, c. 768.)

**Cross Reference.**—As to applicability of section to vehicles meeting as they approach intersection, see note to § 20-155.

**Editor's Note.**—The 1965 amendment added the provisos at the end of the next to last paragraph in subsection (b).

A number of the cases cited in the note below were decided prior to the 1965 amendment to subsection (b), which added the provisos as to duration of signal and as to violation not constituting negligence per se.

For note on "Turning and Stopping—Signals by Drivers," see 29 N.C.L. Rev. 439.

**In General.**—One driving an automobile upon a public highway is required by provision of this section to give specific signals before stopping or turning thereon, and the failure of one so driving to give the signal required by statute is negligence, and when the proximate cause of injury, damages may be recovered therefor by the one injured. *Murphy v. Asheville-Knoxville Coach Co.*, 200 N.C. 92, 156 S.E. 550 (1931).

**The manifest object of this section is to promote vehicular travel.** In the very nature of things, drivers of motor vehicles act on external appearances. These matters being true, the language of this section must be accorded a reasonable and realistic interpretation to effect the legislative purpose. *Cooley v. Baker*, 231 N.C. 533, 58 S.E.2d 115 (1950).

The manifest purpose of this section is to promote safety in the operation of automobiles on the highways, and not to obstruct vehicular traffic. *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**Construction.** — This section must be given a reasonable and realistic interpretation to effect the legislative purpose. *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

This section imposes two duties upon a motorist intending to turn, (1) to see that the movement can be made in safety, and (2) to give the required signal when the operation of any other vehicle may be affected. *Tart v. Register*, 257 N.C. 161, 125 S.E.2d 754 (1962); *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

This section requires of one operating a motor vehicle before starting or stopping

or turning from the direct line that he is traveling to first see that such movement can be made in safety, and when the operation of another vehicle by such movement may be affected, shall give a signal plainly visible to the driver of the other vehicle of his intent to make such movement. *Porter v. Philyaw*, 204 F. Supp. 285 (W.D.N.C. 1962).

The provisions of this section impose two duties upon a motorist intending to turn from a direct line upon a highway: (1) To exercise reasonable care to see that such movement can be made in safety, and (2) to give the required signal whenever the operation of any other vehicle may be affected by such movement, plainly visible to the driver of such other vehicle, of the intention to make such movement. *McNamara v. Outlaw*, 262 N.C. 612, 138 S.E.2d 287 (1964).

The requirement that a motorist shall not turn from a straight line until he has first seen that the movement can be made in safety does not mean that he may not make a left turn on the highway unless the circumstances be absolutely free from danger, but only that he exercise reasonable care under the circumstances in ascertaining that such movement can be made with safety to himself and others. *Cooley v. Baker*, 231 N.C. 533, 58 S.E.2d 115 (1950); *White v. Lacey*, 245 N.C. 364, 96 S.E.2d 1 (1957); *Williams v. Tucker*, 259 N.C. 214, 130 S.E.2d 306 (1963); *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

Subsection (a) of this section does not mean that a motorist may not make a left turn on a highway unless the circumstances be absolutely free from danger. Only reasonable care must be exercised in determining that the movement may be made in safety. *Tart v. Register*, 257 N.C. 161, 125 S.E.2d 754 (1962).

A motorist is not required to ascertain that a turning motion is absolutely free from danger. *Cowan v. Murrows Transfer, Inc.*, 262 N.C. 550, 138 S.E.2d 228 (1964).

The provisions of subsection (a) do not require infallibility of a motorist, and do not mean that he cannot make a left turn upon a highway unless the circumstances be absolutely free from danger. *McNamara*



v. Outlaw, 262 N.C. 612, 138 S.E.2d 287 (1964).

**Making Left Turn without Signaling.**—

This section does not require that a motorist give proper signal before making a left turn on the highway unless the surrounding circumstances afford him reasonable grounds for apprehending that such movement may affect the operation of another vehicle, and in exercising such prevision he may, in the absence of notice to the contrary, assume that other motorists will maintain a proper lookout, drive at a lawful speed, and otherwise exercise due care. Cooley v. Baker, 231 N.C. 533, 58 S.E.2d 115 (1950).

Where a motorist makes a left turn across a street, without signaling, to enter a filling station, and makes such turn when a vehicle approaching from the opposite direction is 900 feet away, and is struck by such other vehicle which was traveling at a speed of approximately 70 miles per hour, such motorist does not violate this section, since the motorist had every reason to believe that he could complete his turn with safety to himself and others without affecting in any way the operation of the approaching vehicle. Cooley v. Baker, 231 N.C. 533, 58 S.E.2d 115 (1950).

The provisions of this section do not require the driver of a motor vehicle intending to make a left turn upon a highway to signal his purpose to turn in every case. The duty to give a statutory signal of an intended left turn does not arise in any event unless the operation of some "other vehicle may be affected by such movement." And even then the law does not require infallibility of the motorist. It imposes upon him the duty of giving a statutory signal of his intended left turn only in case the surrounding circumstances afford him reasonable grounds for apprehending that his making the left turn upon the highway might affect the operation of another vehicle. Blanton v. Carolina Dairy, Inc., 238 N.C. 382, 77 S.E.2d 922 (1953).

**Giving Both Hand and Mechanical Signals Not Required.**—There is nothing in this section or in the decisions that requires under any conditions that a hand signal and a mechanical or electrical signal shall both be given before making a left turn. Rudd v. Stewart, 255 N.C. 90, 120 S.E.2d 601 (1961).

**Giving Signal Does Not Relieve Driver of Other Duties.**—The requirement in this section that a prescribed hand signal be given of intention to make a left turn in traffic does not constitute full compliance with the mandate also expressed that be-

fore turning from a direct line the driver shall first see that such movement can be made in safety, nor does the performance of this mechanical act alone relieve the driver of the common-law duty to exercise due care in other respects. Ervin v. Cannon Mills Co., 233 N.C. 415, 64 S.E.2d 431 (1951); Simmons v. Rogers, 247 N.C. 340, 100 S.E.2d 849 (1957).

**Signaler Does Not Acquire Right to Make Uninterrupted Turn.**—An allegation that the proper turn signal was given does not support the conclusion that the signaler thereby acquired the right to make an uninterrupted turn, or that the turn made pursuant thereto was lawful. Tart v. Register, 257 N.C. 161, 125 S.E.2d 754 (1962).

**Duty to See That Turn May Be Made in Safety.**—The signal would be futile if the movement could not be made in safety; and, therefore, there is a complete failure of duty upon the part of the driver of the turning car, if he does not first use reasonable care to see that the turn may be made in safety. Ervin v. Cannon Mills Co., 233 N.C. 415, 64 S.E.2d 431 (1951).

Where cars are meeting at an intersection and one intends to turn across the lane of travel of the other, subsection (b) of § 20-155 and subsection (a) of this section apply, and the driver making the turn is under duty to give a plainly visible signal of his intention to turn, and ascertain that such movement can be made in safety, without regard to which vehicle entered the intersection first. Fleming v. Drye, 253 N.C. 545, 117 S.E.2d 416 (1960); King v. Sloan, 261 N.C. 562, 135 S.E.2d 556 (1964).

The giving of a signal for a left turn does not give the signaler an absolute right to make the turn immediately, regardless of circumstances, but the signaler must first ascertain that the movement may be made safely. Eason v. Grimsley, 255 N.C. 494, 121 S.E.2d 885 (1961); McNamara v. Outlaw, 262 N.C. 612, 138 S.E.2d 287 (1964).

**Person Observing No Vehicles in Either Direction Is under No Obligation to Give Signal.**—The plaintiff having first looked in both directions, and having observed no automobile or other vehicle approaching from either direction, was under no obligation, by virtue of this section to give any signal of his purpose to turn to his left and enter the driveway to his home. He was therefore not negligent as a matter of law in failing to give a signal before he turned to his left and crossed the highway for the purpose of entering the driveway to his

home. *Stovall v. Ragland*, 211 N.C. 536, 190 S.E. 899 (1937).

The driver of an automobile may be required to give, not only the statutory signals, but also other signals, or to slacken speed or take other steps to avoid a collision, if the surrounding circumstances and conditions require it. The giving of the statutory signals is the least the law requires. *Ervin v. Cannon Mills Co.*, 233 N.C. 415, 64 S.E.2d 431 (1951).

The prescribed hand signal should be maintained for a sufficient length of time to enable the driver of the following vehicle to observe it and to understand therefrom what movement is intended. *Ervin v. Cannon Mills Co.*, 233 N.C. 415, 64 S.E.2d 431 (1951); *McNamara v. Outlaw*, 262 N.C. 612, 138 S.E.2d 287 (1964).

A signal must be maintained for a sufficient distance and length of time to enable the driver of the following vehicle to observe it and to understand therefrom what movement is intended. *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**Right to Assume That Driver Will Give Signal.**—While ordinarily a motorist may assume and act on the assumption that the driver of a vehicle approaching from the opposite direction will comply with statutory requirements as to signaling before making a left turn across his path, he is not entitled to indulge in this assumption after he sees or by the exercise of due care ought to see that the approaching driver is turning to his left across the highway to enter an intersecting road. *Jernigan v. Jernigan*, 236 N.C. 430, 72 S.E.2d 912 (1952).

**Right to Assume That Signaler Will Delay Until Turn May Be Made Safely.**—When the circumstances do not allow the signaler a reasonable margin of safety, other motorists affected have the right to assume that he will delay his movement until it may be made in safety. *Eason v. Grimsley*, 255 N.C. 494, 121 S.E.2d 885 (1961).

**And That Approaching Motorist Will Exercise Due Care.**—In considering whether he can turn with safety and whether he should give a statutory signal of his purpose, the driver of a motor vehicle, who undertakes to make a left turn in front of an approaching motorist, has the right to take it for granted, in the absence of notice to the contrary, that the oncoming motorist will maintain a proper lookout, drive at a lawful speed, and otherwise exercise due care to avoid collision with the turning vehicle. *McNamara v.*

*Outlaw*, 262 N.C. 612, 138 S.E.2d 287 (1964).

The approach of a police vehicle giving a signal by siren does not nullify or suspend the provisions of this section, or relieve a motorist of the duty to ascertain, before turning to his right, that such movement can be made in safety, or to signal any vehicle approaching from the rear. *Anderson v. Talman Office Supplies*, 234 N.C. 142, 66 S.E.2d 677 (1951). See *Anderson v. Talman Office Supplies*, 236 N.C. 519, 73 S.E.2d 141 (1952).

**Effect of Traffic Signals at Intersection.**—Where the evidence disclosed that the street intersection in question had electrically operated traffic signals, with the usual red, yellow, and green lights, the rights of a motorist at such intersection were held to be controlled by the traffic signals and not by this section. *White v. Cothran*, 260 N.C. 510, 133 S.E.2d 132 (1963).

**Duty on Starting after Having Stopped for Red Light.**—After stopping for a red light at an intersection, before starting again, a driver should not only have the green light or go sign facing him, but he should also see and determine in the exercise of due care that such movement can be made in safety. *Troxler v. Central Motor Lines, Inc.*, 240 N.C. 420, 82 S.E.2d 342 (1954).

**Electrical Signal Device.**—Evidence that defendant driver gave signal of intention to turn left by an electrical signal device operated by a lever on the steering column, is competent to be considered by the jury on the issue of the contributory negligence of such operator, notwithstanding the absence of evidence that such signal device had been approved by the Department of Motor Vehicles, since, apart from this section, it is for the jury to decide whether the signal was in fact given, whether it indicated a left turn by the operator of the car, and whether the driver of the other car was negligent in failing to observe and heed such signal. *Queen City Coach Co. v. Fultz*, 246 N.C. 523, 98 S.E.2d 860 (1957).

The stopping of a bus on the traveled portion of the highway to receive or discharge a passenger must be done with due regard to the provisions of this section. *Banks v. Shepard*, 230 N.C. 86, 52 S.E.2d 215 (1949).

**Question for Jury.**—Whether defendant observed the rule of the road by ascertaining, first, if such turn would affect the operation of any other vehicle, and, second, by giving the required signal, under this

section, held to raise an issue of fact for the jury. *Mason v. Johnston*, 215 N.C. 95, 1 S.E.2d 379 (1939).

Whether, according to the evidence, red signal lights on a stopped truck flashing on and off were sufficient to indicate a left turn of the truck was for the jury to decide. *Weavil v. C. W. Myers Trading Post, Inc.*, 245 N.C. 106, 95 S.E.2d 533 (1956).

Whether signal lights would blink, and whether, if they would blink, they were "plainly visible" as required by this section, are questions for the jury. *Eason v. Grimsley*, 255 N.C. 494, 121 S.E.2d 885 (1961).

**Violation of Section as Negligence Per Se.**—The 1965 amendment read in part "that the violation of this section shall not constitute negligence per se." For cases decided prior to the 1965 amendment which held otherwise, see *Holland v. Strader*, 216 N.C. 436, 5 S.E.2d 311 (1939); *Bechtler v. Bracken*, 218 N.C. 515, 11 S.E.2d 721 (1940); *Conley v. Pearce-Young-Angel Co.*, 224 N.C. 211, 29 S.E.2d 740 (1944); *Banks v. Shepard*, 230 N.C. 86, 52 S.E.2d 215 (1949); *Grimm v. Watson*, 233 N.C. 65, 62 S.E.2d 538 (1950); *Bradham v. McLean Trucking Co.*, 243 N.C. 708, 91 S.E.2d 891 (1956); *Queen City Coach Co. v. Fultz*, 246 N.C. 523, 98 S.E.2d 860 (1957); *Hall v. Carroll*, 255 N.C. 326, 121 S.E.2d 547 (1961); *Tart v. Register*, 257 N.C. 161, 125 S.E.2d 754 (1962); *Wiggins v. Ponder*, 259 N.C. 277, 130 S.E.2d 402 (1963); *Cowan v. Murrows Transfer, Inc.*, 262 N.C. 550, 138 S.E.2d 228 (1964); *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**Violation Proximately Causing Injury Is Actionable.**—The violation of this section, requiring that a driver turning from a direct line shall first see that such movement can be made in safety and, whenever such movement may affect the operation of another vehicle, give proper signal, is negligence, and is actionable if such violation proximately causes injury to another. *Cooley v. Baker*, 231 N.C. 533, 58 S.E.2d 115 (1950); *Ervin v. Cannon Mills Co.*, 233 N.C. 415, 64 S.E.2d 431 (1951).

**Causal Relation Must Be Shown.**—The violation of this section and of § 20-138, if conceded, is not sufficient to sustain a prosecution for involuntary manslaughter unless a causal relation is shown between the breach of the statute and the death. *State v. Lowery*, 223 N.C. 598, 27 S.E.2d 638 (1943). See *Templeton v. Kelley*, 216 N.C. 487, 5 S.E.2d 555 (1939); *Leary v. Nor-*

*folk So. Bus Corp.*, 220 N.C. 745, 18 S.E.2d 426 (1942) (dis. op.).

**Proximate Cause Is Question for Jury.**—Whether the violation of a safety statute is a proximate cause of injury is ordinarily a question of fact for the determination of the jury. *Holland v. Strader*, 216 N.C. 436, 5 S.E.2d 311 (1939).

If plaintiff violated this section and was guilty of contributory negligence per se, prior to the 1965 amendment which provided that violation of the section is not negligence per se, it was for the jury to say whether such negligence proximately caused or contributed to plaintiff's injuries and damage, bearing in mind that reasonable foreseeability in an essential element of proximate cause. *White v. Lacey*, 245 N.C. 364, 96 S.E.2d 1 (1957).

**Plaintiff's Violation of Section Held Proximate Cause of Collision.**—While plaintiff's evidence was sufficient to establish a violation of § 20-149 in that defendant did not sound his horn before attempting to pass, it was manifest that plaintiff's admitted violation of this section in making a "U" turn to his left without ascertaining that he could do so in safety and without giving the required signal was a proximate cause of the collision justifying a nonsuit against him. *Tallent v. Talbert*, 249 N.C. 149, 105 S.E.2d 426 (1958).

**Failure to Give Hand Signal Held Not Proximate Cause of Collision.**—See *Cozart v. Hudson*, 239 N.C. 279, 78 S.E.2d 881 (1954).

**Evidence held not to compel conclusion that sole proximate cause of collision was illegal left turn made by driver of other car.** *Jernigan v. Jernigan*, 236 N.C. 430, 72 S.E.2d 912 (1952).

**Intervening Negligence Insulating Primary Negligence.**—Plaintiff's evidence tended to show that plaintiff was standing at the rear of a car parked completely off the hard surface on the right, that a car traveling at a speed of 45 to 50 miles per hour slowed down rapidly as it came near the parked car, that the driver of a truck following 250 feet behind the car, immediately when he saw the brake light on the car, applied his brakes without effect and then applied his hand brake and skidded off the highway, striking the rear of the car and the plaintiff. Oncoming traffic prevented the truck driver from turning to the left. The driver of the truck testified that had his brakes been working properly he did not think he would have had any trouble stopping the truck. Held: Even conceding negligence on the part of the



driver of the car in violating this section, the intervening negligence of the driver of the truck in driving at excessive speed or in operating the truck with defective brakes, insulated any negligence of the driver of the car as a matter of law, since neither the intervening negligence nor the resulting injury could have been reasonably anticipated by the driver of the car from his act in rapidly decreasing speed. *Warner v. Lazarus*, 229 N.C. 27, 47 S.E.2d 496 (1948).

**Contributory Negligence Barring Recovery.**—An accident occurred when plaintiff's tractor-trailer, following defendants' tractor-trailer on the highway at night, rammed the rear of defendants' vehicle when it suddenly stopped on the highway. Plaintiff's allegations and evidence were to the effect that defendants' vehicle suddenly stopped without signal by hand or electrical device. Plaintiff's driver testified that he was familiar with the highway and knew he was approaching an intersection where traffic was congested, that he was traveling between 110 and 115 feet behind defendants' vehicle, that he did not see it had stopped until he was within 75 feet of it, and that he immediately put on his brakes but was too close to stop before hitting its rear. It was held that plaintiff's evidence discloses contributory negligence as a matter of law barring recovery. *Fawley v. Bobo*, 231 N.C. 203, 56 S.E.2d 419 (1949).

Even though the driver of a truck which collided with plaintiff's automobile failed to observe the requirements of this and other sections, where the evidence is equally clear that the collision occurred when plaintiff was attempting to overtake and pass the truck proceeding in the same direction at the intersection of highways, without permission so to do by a traffic or police officer, in violation of provisions of § 20-150 (c), contributory negligence on the part of the plaintiff bars recovery. *Cole v. Fletcher Lumber Co.*, 230 N.C. 616, 55 S.E.2d 86 (1949).

Plaintiff truck driver held guilty of contributory negligence in turning left without seeing that movement could be made in safety, and he could not recover damages from colliding with tractor-trailer. *Gasperson v. Rice*, 240 N.C. 660, 83 S.E.2d 665 (1954).

**Evidence Insufficient to Show Mechanical or Electrical Signal.**—Plaintiff, a passenger in a bus, was injured when a truck following the bus collided with the rear thereof when the bus was stopped on the highway to permit a passenger to alight.

Defendant bus company admitted that its driver gave no hand signal, but introduced evidence of a rule of the Utilities Commission as to the required lighting equipment on motor vehicles and evidence that the bus had been inspected and approved by an inspector of the Utilities Commission, and certificate of title issued by the Department of Motor Vehicles, together with testimony of the driver that the stop lights were on only when the brakes were on and then only if one stopped the bus suddenly, and that he slowed down gradually before stopping the bus. Held: The evidence is insufficient to show that a mechanical or electrical signal as required by this section was given, and appellant's motion to nonsuit was properly denied. *Banks v. Shepard*, 230 N.C. 86, 52 S.E.2d 215 (1949).

**Instruction Held Erroneous.** — An instruction stating in substance that defendants must first prove that plaintiff failed to ascertain safe turning conditions and, having proved this, must go further and prove that plaintiff failed to signal his intention to turn, and that the failure to signal was the proximate cause of the collision, placed an unwarranted burden on defendants. *Mitchell v. White*, 256 N.C. 437, 124 S.E.2d 137 (1962).

Where there is no evidence that defendant driver failed to give the signal for a left turn, as required by this section, and no evidence that defendant was traveling at excessive speed at the time, it is error for the court to instruct the jury upon the issue of the driver's negligence in regard to turn signals and excessive speed. *Textile Motor Freight, Inc. v. DuBose*, 260 N.C. 497, 133 S.E.2d 129 (1963).

**Evidence Showing Violation of Section.**—See *Powell v. Lloyd*, 234 N.C. 481, 67 S.E.2d 664 (1951).

**Evidence of Negligence Sufficient for Jury.**—Evidence that defendant driver attempted to turn left into a dirt road without giving a plain and visible signal of his intention to do so, did not keep a proper lookout, and did not heed plaintiff's warning horn, resulting in a collision with plaintiff's vehicle as plaintiff, traveling in the same direction, was attempting to pass, is sufficient to be submitted to the jury on the issue of negligence. *Eason v. Grimsley*, 255 N.C. 494, 121 S.E.2d 885 (1961).

Applied in *Badders v. Lassiter*, 240 N.C. 413, 82 S.E.2d 357 (1954); *Shoe v. Hood*, 251 N.C. 719, 112 S.E.2d 543 (1960); *Scarborough v. Ingram*, 256 N.C. 87, 122 S.E.2d 798 (1961); *Parker v. Bruce*, 258 N.C. 341, 128 S.E.2d 561 (1962); *Queen v. Jarrett*,

258 N.C. 405, 128 S.E.2d 894 (1963); *Faulk v. Althouse Chem. Co.*, 259 N.C. 395, 130 S.E.2d 684 (1963); *Mayberry v. Allred*, 263 N.C. 780, 140 S.E.2d 406 (1965); *Carolina Coach Co. v. Cox*, 337 F.2d 101 (4th Cir. 1964).

**Cited in** *Smith v. Carolina Coach Co.*, 214 N.C. 314, 199 S.E. 90 (1938); *Newbern v. Leary*, 215 N.C. 134, 1 S.E.2d 384 (1939); *Matheny v. Central Motor Lines*,

233 N.C. 673, 65 S.E.2d 361 (1951); *Morrisette v. A. G. Boone Co.*, 235 N.C. 162, 69 S.E.2d 239 (1952); *Aldridge v. Hasty*, 240 N.C. 353, 82 S.E.2d 331 (1954); *Emerson v. Munford*, 242 N.C. 241, 87 S.E.2d 306 (1955); *Hollowell v. Archbell*, 250 N.C. 716, 110 S.E.2d 262 (1959); *McPherson v. Haire*, 262 N.C. 71, 136 S.E.2d 224 (1964); *Correll v. Gaskins*, 263 N.C. 212, 139 S.E.2d 202 (1964).

§ 20-155. **Right-of-way.**—(a) When two vehicles approach or enter an intersection and/or junction at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right except as otherwise provided in § 20-156 and except where the vehicle on the right is required to stop by a sign erected pursuant to the provisions of § 20-158 and except where the vehicle on the right is required to yield the right-of-way by a sign erected pursuant to the provisions of § 20-158.1.

(b) The driver of a vehicle approaching but not having entered an intersection and/or junction, shall yield the right-of-way to a vehicle already within such intersection and/or junction whether the vehicle in the junction is proceeding straight ahead or turning in either direction: Provided, that this subsection shall not be interpreted as giving the right-of-way to a vehicle already in an intersection and/or junction when said vehicle is turning either to the right or left unless the driver of said vehicle has given a plainly visible signal of intention to turn as required in § 20-154.

(c) The driver of any vehicle upon a highway within a business or residence district shall yield the right-of-way to a pedestrian crossing such highway within any clearly marked cross-walk, or any regular pedestrian crossing included in the prolongation of the lateral boundary lines of the adjacent sidewalk at the end of a block, except at intersections where the movement of traffic is being regulated by traffic officers or traffic direction devices.

(d) The driver of any vehicle approaching but not having entered a traffic circle shall yield the right-of-way to a vehicle already within such traffic circle. (1937, c. 407, s. 117; 1949, c. 1016, s. 2; 1955, c. 913, ss. 6, 7.)

**Editor's Note.**—For brief comment on the right-of-way as between vehicles on a paved road and those entering from unpaved roads, see 34 N.C.L. Rev. 81 (1955).

**Term "and/or" Not Approved.**—See *Gibson v. Central Mfrs.' Mut. Ins. Co.*, 232 N.C. 712, 62 S.E.2d 320 (1950); *Brady v. Nehi Beverage Co.*, 242 N.C. 32, 86 S.E.2d 901 (1955).

**Section Applies to Intersections Not Covered by Other Rules.**—This section announces the rule with respect to use of intersections not covered by other rules. *McEwen Funeral Serv. Inc. v. Charlotte City Coach Lines, Inc.*, 248 N.C. 146, 102 S.E.2d 816 (1958).

**Where there are no stop signs or traffic control devices at a street intersection,** neither street is favored over the other, notwithstanding that one is paved and the other is not, and the right-of-way at such intersection is governed by subsections (a) and (b) of this section. *Mallette v. Ideal Laundry & Dry Cleaners, Inc.*, 245 N.C.

652, 97 S.E.2d 245 (1957); *Rhyne v. Bailey*, 254 N.C. 467, 119 S.E.2d 385 (1961).

Where by reason of automatic traffic lights, stop or caution signs, or other devices, one street at an intersection is favored over the other, and one street is thereby made permanently or intermittently dominant and the other servient, this section has no application. *White v. Phelps*, 260 N.C. 445, 132 S.E.2d 902 (1963).

Ordinarily, when traffic lights are installed at an intersection, the relative rights of motorists approaching on intersecting streets are determinable with reference thereto rather than by the provisions of this section. *Cogdell v. Taylor*, 264 N.C. 424, 142 S.E.2d 36 (1965).

Absent traffic lights, the relative rights of motorists are determinable with reference to this section. *Cogdell v. Taylor*, 264 N.C. 424, 142 S.E.2d 36 (1965).

**Entering Intersection "at Approximately the Same Time."**—Subsection (a) does

apply unless the two vehicles approach or enter the intersection at approximately the same time. When that condition does not exist, the vehicle first reaching and entering the intersection has the right-of-way over a vehicle subsequently reaching it, irrespective of their directions of travel; and it is the duty of the driver of the latter vehicle to delay his progress so as to allow the first arrival to pass in safety. *State v. Hill*, 233 N.C. 61, 62 S.E.2d 532 (1950); *Brady v. Nehi Beverage Co.*, 242 N.C. 32, 86 S.E.2d 901 (1955); *Downs v. Odom*, 250 N.C. 81, 108 S.E.2d 65 (1959).

Two motor vehicles approach or enter an intersection at approximately the same time within the purview of these rules whenever their respective distances from the intersection, their relative speeds, and the other attendant circumstances show that the driver of the vehicle on the left should reasonably apprehend that there is danger of collision unless he delays his progress until the vehicle on the right has passed. *State v. Hill*, 233 N.C. 61, 62 S.E.2d 532 (1950); *Bennett v. Stephenson*, 237 N.C. 377, 75 S.E.2d 147 (1953); *Brady v. Nehi Beverage Co.*, 242 N.C. 32, 86 S.E.2d 901 (1955); *Taylor v. Brake*, 245 N.C. 553, 96 S.E.2d 686 (1957).

It cannot be held as a matter of law that plaintiff's automobile and defendants' truck approached or entered the intersection "at approximately the same time," when the latter was 125 feet away from the intersection when the former was entering it, and when plaintiff's automobile had crossed within four feet of the opposite curb when defendants' truck collided therewith. *Crone v. Fisher*, 223 N.C. 635, 27 S.E.2d 642 (1943).

#### **Duty of Driver Approaching from Left.**

—If the driver of the automobile on the left approaching an intersection sees, or in the exercise of reasonable prudence should see an automobile approaching from his right in such a manner that apparently the two automobiles will reach the intersection at approximately the same time, it is his duty to decrease his speed, bring his automobile under control and if necessary stop, and to yield the right-of-way to the driver of the automobile on his right in order to enable him to proceed and thus avoid a collision. The law imposes this duty on the driver of an automobile approaching an intersecting highway unless the automobile coming from his right on the intersecting highway is a sufficient distance away to warrant the assumption that he can proceed before the other automobile operated at a reasonable speed reaches

the crossing. *Bennett v. Stephenson*, 237 N.C. 377, 75 S.E.2d 147 (1953).

When the driver of a motor vehicle on the left comes to an intersection and finds no one approaching it on the other street within such distance as reasonably to indicate danger of collision, he is under no obligation to stop or wait, but may proceed to use such intersection as a matter of right. *Carr v. Stewart*, 252 N.C. 118, 113 S.E.2d 18 (1960).

**Speed Not Preventing Application of Rule.**—The fact that the defendant's automobile, which was approaching from the plaintiff's right, was being driven at the speed of 35 to 40 miles per hour in a residential district with no other vehicle in view would not prevent the application of the rule as to right-of-way for automobiles entering an intersection at the same time, in the absence of evidence that the speed of defendant's automobile proximately caused the collision. *Bennett v. Stephenson*, 237 N.C. 377, 75 S.E.2d 147 (1953).

**Right to Assume That Driver Approaching from Left Will Yield Right-of-Way.**—If two automobiles approach an intersection at approximately the same time, the driver of the automobile on the right, in approaching the intersection, has the right to assume that the driver of the automobile coming from the left will yield the right-of-way and stop or slow down sufficiently to permit the other to pass in safety. *Bennett v. Stephenson*, 237 N.C. 377, 75 S.E.2d 147 (1953). See *Finch v. Ward*, 238 N.C. 290, 77 S.E.2d 661 (1953).

A driver with the right-of-way at an intersection is under no duty to anticipate disobedience of law or negligence on the part of others, but in the absence of anything which puts him on notice, or should put him on notice, to the contrary, he is entitled to assume, and to act on the assumption, that others will obey the law, exercise reasonable care and yield to him the right-of-way. *Carr v. Lee*, 249 N.C. 712, 107 S.E.2d 544 (1959).

Where evidence is uncontradicted that defendant with the right-of-way entered the intersection operating truck at a speed of five or ten miles per hour, he had the right to assume, and to act on the assumption, in the absence of notice to the contrary, that the operator of the automobile in which plaintiff was riding would recognize his right-of-way and grant him a free passage over the intersection. *Brady v. Nehi Beverage Co.*, 242 N.C. 32, 86 S.E.2d 901 (1955).

A driver having the right-of-way may act upon the assumption, in the absence of



notice to the contrary, that the other motorist will recognize his right-of-way and grant him a free passage over the intersection. *Carr v. Stewart*, 252 N.C. 118, 113 S.E.2d 18 (1960).

**Or That Driver Will Not Block Lane by Turning.**—A driver intending to go straight through an intersection has the right to assume and act on the assumption that all other travelers will observe the law and not block his lane of travel by a left turn without first ascertaining that such move can be made in safety. *Harris v. Parris*, 260 N.C. 524, 133 S.E.2d 195 (1963).

A through driver is required to give notice of any intended change in direction through an intersection, and, in the absence of such notice, other travelers are required to assume that he intends to continue through in his proper lane of traffic. *Harris v. Parris*, 260 N.C. 524, 133 S.E.2d 195 (1963).

**"Right-of-Way" Defined.** — The expression "right-of-way" has been interpreted to mean the right of a vehicle to proceed uninterruptedly in a lawful manner in the direction in which it is moving in preference to another vehicle approaching from a different direction into its path. *Bennett v. Stephenson*, 237 N.C. 377, 75 S.E.2d 147 (1953).

**Right-of-Way Is Not Absolute.** — One who has the right-of-way at an intersection does not have the absolute right-of-way in the sense that he is not bound to use ordinary care in the exercise of his right. When he sees, or by the exercise of due care should see, that an approaching driver cannot or will not observe the traffic laws, he must use such care as an ordinarily prudent person would use under the same or similar circumstances to avoid collision and injury. His duty under such circumstances consists in keeping a reasonable lookout, keeping his vehicle under control, and taking reasonable precautions to avoid injury to persons and property. *Carr v. Lee*, 249 N.C. 712, 107 S.E.2d 544 (1959).

Where vehicles involved in a collision were meeting as they approached the intersection, subsection (b) of this section and § 20-154 are applicable. *Fowler v. Atlantic Co.*, 234 N.C. 542, 67 S.E.2d 496 (1951); *Fleming v. Drye*, 253 N.C. 545, 117 S.E.2d 416 (1960).

**Entering Intersection Ahead of Other Car.**—If plaintiff's automobile enters the intersection of two streets, at a time when the approaching car of defendant is far enough away to justify a person in believ-

ing that, in the exercise of reasonable care and prudence, he may safely pass over the intersection ahead of the oncoming car, the plaintiff has the right-of-way and it is the duty of the defendant to reduce his speed and bring his car under control and yield. *Yellow Cab Co. v. Sanders*, 223 N.C. 626, 27 S.E.2d 631 (1943).

Where defendant's automobile came to a stop at an intersection 23 feet wide while the automobile decedent was traveling in was more than 125 feet away and a collision occurred when defendant attempted to cross the intersection, it was held that the two vehicles did not approach or enter the intersection at approximately the same time and therefore the automobile of the decedent did not have the right-of-way. *State v. Hill*, 233 N.C. 61, 62 S.E.2d 532 (1950).

In an action to recover damages resulting from a collision at a street intersection, plaintiff's evidence that she entered the intersection first and that defendants entered the intersection from her left was sufficient to take the case to the jury over defendants' motion to nonsuit. *Harrison v. Kapp*, 241 N.C. 408, 85 S.E.2d 337 (1955).

Where defendant's truck entered the intersection before the automobile in which plaintiff was riding reached the intersection, and the truck approached the intersection from the automobile's right side of the road, the truck had the right-of-way. *Brady v. Nehi Beverage Co.*, 242 N.C. 32, 86 S.E.2d 901 (1955).

**If Vehicle on Left Has Already Entered Intersection.**—This section does not apply if the driver on the right, at the time he approaches the intersection and before reaching it, in the exercise of reasonable prudence ascertains that the vehicle on his left has already entered the intersection. *Kennedy v. Smith*, 226 N.C. 514, 39 S.E.2d 380 (1946); *Taylor v. Brake*, 245 N.C. 553, 96 S.E.2d 686 (1957).

If the automobile approaching from the left reaches the intersection first and has already entered the intersection, the driver of the automobile on the right is under duty to permit the other automobile to pass in safety. *Bennett v. Stephenson*, 237 N.C. 377, 75 S.E.2d 147 (1953).

**Rule Where Driver Has Brought Automobile to a Complete Stop.**—The rule as to right-of-way prescribed by this section applies to moving vehicles approaching an intersection at approximately the same time. Where the driver has already brought his automobile to a complete stop, thereafter the duty would devolve upon him to exercise due care to observe

approaching vehicles and to govern his conduct accordingly. One who is required to stop before entering a highway should not proceed, with oncoming vehicles in view, until in the exercise of due care he can determine that he can do so with reasonable assurance of safety. *Matheny v. Central Motor Lines*, 233 N.C. 673, 65 S.E.2d 361 (1951); *Badders v. Lassiter*, 240 N.C. 413, 82 S.E.2d 357 (1954).

**Private Road or Drive.**—The exception in subsection (a) relates to entering from a "private road or drive." *Brady v. Nehi Beverage Co.*, 242 N.C. 32, 86 S.E.2d 901 (1955).

**Subsection (a) Inapplicable to Vehicles Proceeding in Opposite Directions.**—Where motorists are proceeding in opposite directions and meeting at an intersection controlled by automatic traffic lights, subsection (a) of this section has no application. *Shoe v. Hood*, 251 N.C. 719, 112 S.E.2d 543 (1960); *Wiggins v. Ponder*, 259 N.C. 277, 130 S.E.2d 402 (1963).

Where motorists are proceeding in opposite directions and meeting at an intersection, subsection (a) of this section has no application. *Fleming v. Drye*, 253 N.C. 545, 117 S.E.2d 416 (1960).

**Duty of Driver Turning Left.**—The driver desiring to turn left at the intersection may move into the intersection when the signal facing him is green, but before turning left is charged with the duty to yield the right of way under this section. *Hudson v. Petroleum Transit Co.*, 250 N.C. 435, 108 S.E.2d 900 (1959).

Where cars are meeting at an intersection and one intends to turn across the lane of travel of the other, subsection (b) of this section and subsection (a) of § 20-154 apply, and the driver making the turn is under duty to give a plainly visible signal of his intention to turn, and ascertain that such movement can be made in safety, without regard to which vehicle entered the intersection first. *Fleming v. Drye*, 253 N.C. 545, 117 S.E.2d 416 (1960); *King v. Sloan*, 261 N.C. 562, 135 S.E.2d 556 (1964).

It is incumbent upon a motorist, before making a left turn at an intersection, to give a plainly visible signal of his intention to turn and to ascertain that the movement can be made in safety. This, without regard to which vehicle enters the intersection first. *Wiggins v. Ponder*, 259 N.C. 277, 130 S.E.2d 402 (1963).

**If Vehicle Turning Has Already Entered Intersection.**—Under subsection (b) of this section, the vehicle first reaching an intersection which has no stop sign or traffic signal has the right of way over a vehicle subsequently reaching it, whether the vehi-

cle in the intersection is proceeding straight ahead or turning in either direction; and it is the duty of the driver of the vehicle not having entered the intersection to delay his progress and allow the vehicle which first entered the intersection to pass in safety. *Carr v. Stewart*, 252 N.C. 118, 113 S.E.2d 18 (1960).

If the jury should find that plaintiff was already in the intersection, giving the statutory left-turn signal, at a time when defendant was 150 feet away, it was defendant's duty to have delayed her entrance into the intersection until plaintiff had cleared it entirely. *Mayberry v. Allred*, 263 N.C. 780, 140 S.E.2d 406 (1965).

**Failure to Yield Right-of-Way Held Proximate Cause of Collision.**—See *Freeman v. Preddy*, 237 N.C. 734, 76 S.E.2d 159 (1953).

**Emergency ambulances are expressly excepted from the requirements of this section.** *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

**Evidence Supporting Inference That Defendant Negligently Failed to Yield Right-of-Way.**—See *Donlop v. Snyder*, 234 N.C. 627, 68 S.E.2d 316 (1951); *Tripp v. Harris*, 260 N.C. 200, 132 S.E.2d 322 (1963).

**Evidence Raising Issue of Negligence.**—Evidence that defendant failed to yield the right-of-way to the plaintiff who was on the right, and that defendant was driving at 50 miles per hour through the intersection, raised the issue of defendant's negligence, and the motion for nonsuit at the close of all the evidence was properly denied. *Price v. Gray*, 246 N.C. 162, 92 S.E.2d 884 (1957).

**Prima Facie Case of Negligence.**—Where it may be inferred from plaintiff's evidence that defendant has failed to observe either of the statutory requirements of § 20-154 (a) or subsection (b) of this section and injury has been suffered by plaintiff because of such failure, plaintiff has made out a prima facie case of actionable negligence. *Wiggins v. Ponder*, 259 N.C. 277, 130 S.E.2d 402 (1963).

**The pleadings and the evidence were insufficient to support plaintiff's theory that plaintiff had the right-of-way by virtue of subsection (b) of this section.** *Taylor v. Brake*, 245 N.C. 553, 96 S.E.2d 686 (1957).

**Instruction.**—Under this section where damages are sought for defendant's negligent driving at a street intersection and there is evidence tending to show that the defendant was approaching the intersection at an unlawful rate of speed and did not slow up before the happening of the collision with another car, an instruction correctly charging the rule of the right-of-

way if both cars approach the intersection simultaneously and the rule that if one of the cars was already in the intersection it was the duty of the driver of the other car to slow down and permit it to pass will not be held for error. *Piner v. Richter*, 202 N.C. 573, 163 S.E. 561 (1932).

**Court Not Required to Read Applicable Statutes to Jury.**—Where the trial court charges the law in regard to the statutory provisions in regard to the right-of-way at an intersection, and applies the law to the evidence in the case, objection on the ground that the court failed to charge on the statutes is without merit, it not being required that the court read the applicable statutes to the jury. *Kennedy v. James*, 252 N.C. 434, 113 S.E.2d 889 (1960).

§ 20-156. **Exceptions to the right-of-way rule.**—(a) The driver of a vehicle entering a public highway from a private road or drive shall yield the right-of-way to all vehicles approaching on such public highway.

(b) The driver of a vehicle upon a highway shall yield the right-of-way to police and fire department vehicles and public and private ambulances when the latter are operated upon official business and the drivers thereof sound audible signal by bell, siren or exhaust whistle. This provision shall not operate to relieve the driver of a police or fire department vehicle or public or private ambulance from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle from the consequence of any arbitrary exercise of such right-of-way. (1937, c. 407, s. 118.)

**Cross Reference.**—See note to § 20-140.

**Editor's Note.**—For note on liability of municipality for accident involving fire truck responding to an emergency call for inhalator, see 30 N.C.L. Rev. 89 (1951).

**Power of State Illustrated.**—Subsection (a) of this section and § 20-165.1 illustrate the power of the State to regulate the time and manner of entering a public highway. *Moses v. State Highway Comm'n*, 261 N.C. 316, 134 S.E.2d 664 (1964).

**Duty of Driver Entering Highway to Look for Approaching Vehicles.**—In order to comply with subsection (a) of this section the driver of a vehicle entering a public highway from a private road or drive is required to look for vehicles approaching on such highway, and this is required to be done at a time when this precaution may be effective. *Gantt v. Hobson*, 240 N.C. 426, 82 S.E.2d 384 (1954). See also *Clark v. Emerson*, 245 N.C. 387, 95 S.E.2d 880 (1957).

In order to comply with this section, a driver entering a public highway from a private drive is required to look for vehicles approaching on such highway, to look at a time when the precaution may be effective, to yield the right-of-way to vehicles traveling on the highway, and to defer entry until the movement may be made in safety. *C. C. T. Equip. Co. v.*

*Applied* in *Wooten v. Smith*, 215 N.C. 48, 200 S.E. 921 (1939); *Primm v. King*, 249 N.C. 228, 106 S.E.2d 223 (1958); *Greene v. Meredith*, 264 N.C. 178, 141 S.E.2d 287 (1965).

**Quoted** in *Bobbitt v. Haynes*, 231 N.C. 373, 57 S.E.2d 361 (1950); *Jordan v. Blackwelder*, 250 N.C. 189, 108 S.E.2d 429 (1959).

**Stated** in *Smith v. Buie*, 243 N.C. 209, 90 S.E.2d 514 (1955).

**Cited** in *Leary v. Norfolk So. Bus Corp.*, 220 N.C. 745, 18 S.E.2d 426 (1942); *Kelly v. Ashburn*, 256 N.C. 338, 123 S.E.2d 775 (1962).

*Hertz Corp.*, 256 N.C. 277, 123 S.E.2d 802 (1962).

Before entering a public highway from a private driveway, the operator of a motor vehicle is required to exercise due care to see that the intended movement can be made in safety. *Smith v. Nunn*, 257 N.C. 108, 125 S.E.2d 351 (1962).

Abutting owner's right of access must be exercised with due regard to the safety of others who have an equal right to use the highway. *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965).

**Right to Assume That Driver Entering Highway Will Comply with Section.**—The operator of an automobile traveling upon a public highway in this State is under no duty to anticipate that the driver of an automobile entering the public highway from a private road or drive will fail to yield the right-of-way to all vehicles on such public highway, as required by subsection (a) of this section, and in the absence of anything which gives or should give notice to the contrary, he is entitled to assume and to act upon the assumption, even to the last moment, that the driver of the automobile so entering the public highway from a private road or drive will, in obedience to the section, yield the right-of-way.



Garner v. Pittman, 237 N.C. 328, 75 S.E.2d 111 (1953).

One operating his motorcycle upon the highway was under no duty to assume that a motorist would fail to yield to him the right-of-way which was rightfully his, and he was entitled to this assumption even to the last moment. Whiteside v. Rooks, 197 F. Supp. 313 (W.D.N.C. 1961).

**Right-of-Way on Dirt Ramp Across Highway.**—This section is applicable at such times as a dirt ramp across a highway is open for public travel, but it does not apply at such times as the ramp is closed by the flagmen. At the times when the ramp is closed public travelers have no right to use it, but must stop and yield the right-of-way to contractor's machinery. The flagmen's signal to stop is at least equivalent to a legally established stop sign or stop light at an intersection. *C. C. T. Equip. Co. v. Hertz Corp.*, 256 N.C. 277, 123 S.E.2d 802 (1962).

Irrespective of subsection (a), a contractor for the improvement of an airport, who is granted permission to maintain a dirt ramp across a highway, is under a duty, before operating its earth-moving equipment onto and across the ramp, to exercise due care to see that such movement can be made with safety and without injury to users of the highway. *C. C. Mangum, Inc. v. Gasperson*, 262 N.C. 32, 136 S.E.2d 234 (1964).

**When Emergency Vehicle Accorded Right-of-Way.**—If the operator of an authorized emergency vehicle bona fide believes an emergency exists which requires expeditious movement and in fact has such belief and meets the statutory test by giving warning, he is accorded the necessary privilege of the right-of-way. *Williams v. Sossoman's Funeral Home, Inc.*, 248 N.C. 524, 103 S.E.2d 714 (1958).

No duty rests on the operator of a motor vehicle making normal use of a highway to yield the right-of-way to an-

other vehicle on an emergency mission until an appropriate warning has been directed to him, and he has reasonable opportunity to yield his prior right. *McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, Inc.*, 248 N.C. 146, 102 S.E.2d 816 (1958).

**Effect of Traffic Lights on Privileges of Emergency Vehicles.**—The General Assembly did not intend the right-of-way privileges accorded emergency ambulances by this section to be extended to apply to intersections controlled by automatic traffic lights. *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

The audible sound which this section requires is such a sound as was in fact heard and comprehended, or which should have been heard and its meaning understood, by a reasonably prudent operator called upon to yield the right-of-way. *McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, Inc.*, 248 N.C. 146, 102 S.E.2d 816 (1958); *Williams v. Sossoman's Funeral Home, Inc.*, 248 N.C. 524, 103 S.E.2d 714 (1958).

**Right of Operator of Emergency Vehicle to Assume That Other Drivers Will Yield.**—The operator of an authorized emergency vehicle, while on an emergency call, has the right to proceed upon the assumption that when the required signal by siren is given, other users of the highway will yield the right-of-way. *Williams v. Sossoman's Funeral Home, Inc.*, 248 N.C. 524, 103 S.E.2d 714 (1958).

Applied in *Nantz v. Nantz*, 255 N.C. 357, 121 S.E.2d 561 (1961); *State v. Gurley*, 257 N.C. 270, 125 S.E.2d 445 (1962).

Quoted in *Bobbitt v. Haynes*, 231 N.C. 373, 57 S.E.2d 361 (1950); *Brady v. Nehi Beverage Co.*, 242 N.C. 32, 86 S.E.2d 901 (1955).

Cited in *Fleming v. Drye*, 253 N.C. 545, 117 S.E.2d 416 (1960).

**§ 20-157. What to do on approach of police or fire department vehicles; driving over fire hose or blocking fire-fighting equipment.**—(a) Upon the approach of any police or fire department vehicle giving audible signal by bell, siren or exhaust whistle, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of highways, and shall stop and remain in such position unless otherwise directed by a police or traffic officer until the police or fire department vehicle shall have passed.

(b) It shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than one block or to drive into or park such vehicle within one block where fire apparatus has stopped in answer to a fire alarm.

(c) Outside of the corporate limits of any city or town it shall be unlawful

for the driver of any vehicle other than one on official business to follow any fire apparatus travelling in response to a fire alarm closer than four hundred (400) feet or to drive into or park such vehicle within a space of four hundred (400) feet from where fire apparatus has stopped in answer to a fire alarm.

(d) It shall be unlawful to drive a motor vehicle over a fire hose or any other equipment that is being used at a fire at any time, or to block a fire-fighting apparatus or any other equipment from its source of supply regardless of its distance from the fire. (1937, c. 407, s. 119; 1955, cc. 173, 744.)

**Local Modification.**—Guilford (driving over fire hose or blocking fire-fighting apparatus): 1953, c. 301.

**This section does not apply to ambulances.** Upchurch v. Hudson Funeral Home, Inc., 263 N.C. 560, 140 S.E.2d 17 (1965).

**Approach of Police Vehicle Does Not Nullify Provisions of § 20-154.**—See note under § 20-154.

**Or Authorize Turn Which Cannot Be Made in Safety.**—This section, requiring a motorist to pull over to the right-hand curb upon the approach of a police vehicle, does not authorize such motorist to cut sharply to the right into another traffic lane immediately in front of a vehicle to his rear at a time and under circumstances which indicate such movement could not be made in safety. Ander-

son v. Talman Office Supplies, 234 N.C. 142, 66 S.E.2d 677 (1951). See Anderson v. Talman Office Supplies, 236 N.C. 519, 73 S.E.2d 141 (1952).

**Warrant Fatally Defective.**—A warrant charging violation of subsection (a) of this section, which fails to charge that defendant was driving a motor vehicle at the time he failed to heed a police siren, is fatally defective. State v. Wallace, 251 N.C. 378, 111 S.E.2d 714 (1959).

**Applied in** State v. McRae, 240 N.C. 334, 82 S.E.2d 67 (1954) (as to subsection (a)); State v. Wells, 259 N.C. 173, 130 S.E.2d 299 (1963).

**Cited in** State v. Payne, 213 N.C. 719, 197 S.E. 573 (1938); Leary v. Norfolk So. Bus Corp., 220 N.C. 745, 18 S.E.2d (1942); State v. Chavis, 232 N.C. 83, 59 S.E.2d 348 (1950).

**§ 20-158. Vehicles must stop and yield right-of-way at certain through highways.**—(a) The State Highway Commission, with reference to State highways, and local authorities, with reference to highways under their jurisdiction, are hereby authorized to designate main traveled or through highways by erecting at the entrance thereto from intersecting highways signs notifying drivers of vehicles to come to full stop before entering or crossing such designated highway, and whenever any such signs have been so erected it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main traveled or through highway and approaching said intersection. No failure so to stop, however, shall be considered contributory negligence per se in any action at law for injury to person or property; but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether the plaintiff in such action was guilty of contributory negligence.

(b) This section shall not interfere with the regulations prescribed by towns and cities.

(c) When a stop light has been erected or installed at any intersection in this State outside of the corporate limits of a municipality, no operator of a vehicle approaching said intersection shall enter the same with said vehicle while the stop light is emitting a red light or stop signal for traffic moving on the highway and in the direction that said approaching vehicle is traveling. All such stop lights emitting alternate red and green lights shall be so arranged and placed that the red light shall appear at the top of the signaling unit and the green light shall appear at the bottom of the signaling unit.

(d) Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than ten dollars or imprisoned not more than ten days. (1937, c. 407, s. 120; 1941, c. 83; 1949, c. 583, s. 2; 1955, c. 384, s. 1; c. 913, s. 7; 1957, c. 65, s. 11.)

**Editor's Note.**—For comment on the 1941 amendment, see 19 N.C.L. Rev. 455.

**"At the Entrance."**—The stop signs referred to in this statute are signs erected "at the entrance" to the main traveled or through highway. A sign six hundred feet away from an intersection cannot reasonably be said to be at the entrance thereto. *Gilliland v. Ruke*, 280 F.2d 544 (4th Cir. 1960).

**"Regulations."**—"Regulations," as mentioned in subsection (b), necessarily means the ordinances adopted by municipalities for the control of traffic at intersections—rules pertaining to right of way. *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

**State Highways.**—Highways which are built and maintained in part out of funds contributed by the federal government and which form links in an interstate system and are designated as U. S. highways, are State highways under the supervision and control of the State Highway Commission and this section is applicable to these just as it is to other State highways. *Yost v. Hall*, 233 N.C. 463, 64 S.E.2d 554 (1951).

**Undesignated Highways.** — Unnamed dirt road and named paved road which intersected were public roads of equal dignity where neither were designated "main travelled or through highway" by State Highway Commission. *Brady v. Nehi Beverage Co.*, 242 N.C. 32, 86 S.E.2d 901 (1955).

**Designation of Streets by Municipal Authorities.**—Where two streets of a municipality intersect, testimony identifying one as the through street and the other as the cross street, on which there is a stop sign to the right of a driver thereon approaching the intersection, connotes that the streets have been so designated and the sign erected by action of the municipal authorities. *Smith v. Buie*, 243 N.C. 209, 90 S.E.2d 514 (1955).

The legislature took recognition of the fact that all highway intersections are not of equal importance because of the density of traffic on one highway as compared to the flow on an intersecting highway. Hence a rule was prescribed for this situation by this section requiring operators of motor vehicles on a servient highway to stop in accordance with signs commanding them to do so. This was supplemented in 1955 by the provisions of § 20-158.1. *McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, Inc.*, 248 N.C. 146, 102 S.E.2d 816 (1958).

The purpose of highway stop signs is to enable the driver of a motor vehicle to

have opportunity to observe the traffic conditions on the highways and to determine when in the exercise of due care he might enter upon the intersecting highway with reasonable assurance of safety to himself and others. *Morrisette v. A. G. Boone Co.*, 233 N.C. 162, 69 S.E.2d 239 (1952); *Edwards v. Vaughn*, 238 N.C. 89, 76 S.E.2d 359 (1953); *Badders v. Lassiter*, 240 N.C. 413, 82 S.E.2d 357 (1954).

The purpose to be served by placing a stop sign some distance from the intersection of a servient and dominant highway is to give the motorist ample time to slow down and stop before entering the zone of danger. And when the driver of a motor vehicle stops at a stop sign on a servient highway and then proceeds into the intersection without keeping a lookout and ascertaining whether he can enter or cross the intersecting highway with reasonable safety, he ignores the intent and purpose of this section. *Edwards v. Vaughn*, 238 N.C. 89, 76 S.E.2d 359 (1953).

The erection of stop signs on an intersecting highway or street is a method of giving the public notice that traffic on one is favored over the other and that a motorist facing a stop sign must yield. *Kelly v. Ashburn*, 256 N.C. 338, 123 S.E.2d 775 (1962).

Subsection (c) of this section is confined to red and green lights at intersections outside of municipal corporate limits. It makes no reference to amber lights and can have no effect where the intersection is within municipal corporate limits. *Wilson v. Kennedy*, 248 N.C. 74, 102 S.E.2d 459 (1958); *Williams v. Sossoman's Funeral Home, Inc.*, 248 N.C. 524, 103 S.E.2d 714 (1958); *Hudson v. Petroleum Transit Co.*, 250 N.C. 435, 108 S.E.2d 900 (1959); *Shoe v. Hood*, 251 N.C. 719, 112 S.E.2d 543 (1960).

Subsection (c) applies only to the regulation of traffic by automatic signal lights at intersections outside of the corporate limits of a municipality. *Cogdell v. Taylor*, 264 N.C. 424, 142 S.E.2d 36 (1965).

**Authority of Municipalities under Subsection (b).** — Subsection (c) of this section with respect to traffic lights is limited to those lights outside of towns and cities, but cities are not denied the authority to regulate the movement of traffic at street intersections under subsection (b). *McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, Inc.*, 248 N.C. 146, 102 S.E.2d 816 (1958).

By implication, at least, this section gives municipalities plenary power to regulate traffic at intersections. *Upchurch*



v. Hudson Funeral Home, Inc., 263 N.C. 560, 140 S.E.2d 17 (1965).

This section does not debar municipalities from requiring ambulances to observe traffic lights. *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

**Duty to Stop Depends upon Presence of Stop Sign.**—The language of this section indicates that the duty to stop depends upon the presence of a stop sign at the time the driver approaches the intersection. He is commanded to stop "in obedience" to the stop sign. If no such sign is in sight and the driver is not aware that there should be one, there is nothing to obey and hence no statutory duty to stop. *Gilliland v. Ruke*, 280 F.2d 544 (4th Cir. 1960).

**Presumption That Signs Were Erected by Lawful Authority.**—Stop signs at intersections are in such general use and their function so well known that a motorist, in the absence of notice to the contrary, may presume they were erected by lawful authority. The presumption is one of fact and, like other presumptions of fact, is rebuttable. *Kelly v. Ashburn*, 256 N.C. 338, 123 S.E.2d 775 (1962).

**Where Stop Sign Has Been Removed or Defaced.**—A collision at an intersection where a stop sign has been erected and then removed or defaced may result from the negligence of one party, or both, or neither. *Kelly v. Ashburn*, 256 N.C. 338, 123 S.E.2d 775 (1962).

**This section does not require that a motorist stop where a stop sign is located.** It requires that he, in obedience to the notice provided by the stop sign, bring his car to a full stop before entering the highway and yield the right of way to vehicles approaching the intersection on the highway. *Clifton v. Turner*, 257 N.C. 92, 125 S.E.2d 339 (1962); *Howard v. Melvin*, 262 N.C. 569, 138 S.E.2d 238 (1964).

**Failure to Stop at Intersection Not Negligence Per Se.**—The failure of a motorist traveling upon a servient highway to stop in obedience to a sign before entering an intersection with a dominant highway is not negligence per se and is insufficient alone to make out a prima facie case of negligence, but is only evidence of negligence to be considered along with other facts and circumstances adduced by the evidence, and an instruction that failure to stop in obedience to the sign is negligence, must be held for reversible error. *Hill v. Lopez*, 228 N.C. 433, 45 S.E.2d 539 (1947). See *Nichols v. Goldston*, 228 N.C. 514, 46 S.E.2d 320 (1948); *Lee v. Robertson Chem. Corp.*, 229 N.C. 447, 50 S.E.2d 181 (1948); *Bobbitt v. Haynes*, 231

N.C. 373, 57 S.E.2d 361 (1950); *Bailey v. Michael*, 231 N.C. 404, 57 S.E.2d 372 (1950); *Johnson v. Bell*, 234 N.C. 522, 67 S.E.2d 658 (1951). And see *Satterwhite v. Bocelato*, 130 F. Supp. 825 (E.D.N.C. 1955), wherein the evidence justified a finding of negligence.

Failure to come to a complete stop before entering a through street intersection is not negligence per se, but only evidence of negligence to be considered with other facts in the case, such holding being a necessary corollary to the provision of this section, that failure to stop before entering a through street intersection should not be considered contributory negligence per se, but only evidence to be considered with the other facts in the case upon the issue of contributory negligence. *Sebastian v. Horton Motor Lines*, 213 N.C. 770, 197 S.E. 539 (1938); *Reeves v. Staley*, 220 N.C. 573, 18 S.E.2d 239 (1942).

This rule is unaffected by a municipal ordinance making such failure to stop unlawful, since this section prevails over the ordinance. *Swinson v. Nance*, 219 N.C. 772, 15 S.E.2d 284 (1941).

The failure of a driver along a servient highway to stop before entering an intersection with a dominant highway is not contributory negligence per se, but is to be considered with other facts in evidence in determining the issue. *Hawes v. Atlantic Ref. Co.*, 236 N.C. 643, 74 S.E.2d 17 (1953); *Primm v. King*, 249 N.C. 228, 106 S.E.2d 223 (1958); *State v. Sealy*, 253 N.C. 802, 117 S.E.2d 793 (1961).

Failure to stop at a stop sign and yield the right of way is not negligence per se, but it is evidence of negligence that may be considered with other facts in the case in determining whether a party thereto was guilty of negligence or contributory negligence. *Johnson v. Bass*, 256 N.C. 716, 125 S.E.2d 19 (1962).

**But Is Evidence of Negligence Sufficient to Support Verdict.**—While a failure to stop and yield the right of way to traffic on the dominant highway is not negligence per se, it is evidence of negligence, and, when the proximate cause of injury, is sufficient to support a verdict for plaintiff. *Wooten v. Russell*, 255 N.C. 699, 122 S.E.2d 603 (1961).

**Negligence of Car Approaching on Through Highway.**—The driver of an automobile upon a through highway did not have the right to assume absolutely that a driver approaching the intersection along a servient highway would obey the stop sign before entering or crossing the through highway, c. 148, Public Laws 1927, s. 21, but was required to keep a proper

lookout and to keep his car at a reasonable speed under the circumstances in order to avoid injury to life or limb, s. 4 of the 1927 act, and the driver of the car along the through highway forfeited his right to rely upon the assumption that the other driver would stop before entering or crossing the intersection when he approached and attempted to traverse it himself at an unlawful or excessive speed, and even when his speed was lawful he remained under duty to exercise due care to ascertain if the driver of the other car was going to violate the statutory requirement in order to avoid the consequences of such negligence, it being necessary to construe the pertinent statutes in *pari materia* and this result being consonant with such construction. *Groome v. Davis*, 215 N.C. 510, 2 S.E.2d 771 (1939).

**Duty of Motorist before Starting from Position on Subservient Highway.**—It is the duty of a motorist before starting from his position on a subservient highway into a dominant highway to exercise due care to see that such movement can be made in safety. *Morrisette v. A. G. Boone Co.*, 235 N.C. 162, 69 S.E.2d 239 (1952).

The driver on the subservient highway is not only required to stop, but, further, is required thereafter to exercise due care to see that he may enter the dominant highway in safety. *Satterwhite v. Bocelato*, 130 F. Supp. 825 (E.D.N.C. 1955).

A driver of a motor vehicle about to enter a highway protected by stop signs must stop as directed, look in both directions and permit all vehicles to pass which are at such a distance and traveling at such a speed that it would be imprudent for him to proceed into the intersection. *Matheny v. Central Motor Lines*, 233 N.C. 673, 65 S.E.2d 361 (1951).

A motorist traveling on a servient highway on which a stop sign has been erected at an intersection with a dominant highway may not lawfully enter such intersection until he has stopped and observed the traffic on the dominant highway and determined in the exercise of due care that he may enter such intersection with reasonable assurance of safety to himself and others. *Primm v. King*, 249 N.C. 228, 106 S.E.2d 223 (1958).

This section not only requires the driver on the servient highway or street to stop, but such driver is further required, after stopping, to exercise due care to see that he may enter or cross the dominant highway or street in safety before entering thereon. *Jordan v. Blackwelder*, 250 N.C. 189, 108 S.E.2d 429 (1959); *Wooten v.*

*Russell*, 255 N.C. 699, 122 S.E.2d 603 (1961); *Howard v. Melvin*, 262 N.C. 569, 138 S.E.2d 238 (1964).

**The right of one starting from a stopped position to undertake to cross an intersection** would depend largely upon the distance from the intersection of approaching vehicles and their speed, and unless under the circumstances he would reasonably apprehend no danger of collision from an approaching vehicle it would be his duty to delay his progress until the vehicle has passed. *Badders v. Lassiter*, 240 N.C. 413, 82 S.E.2d 357 (1954).

**Inadvertent Violation of Section.**—Where there is an unintentional or inadvertent violation of this section, such violation, standing alone, does not constitute culpable negligence in the law of crimes as distinguished from actionable negligence in the law of torts. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. *State v. Sealy*, 253 N.C. 802, 117 S.E.2d 793 (1961).

**Where Stop Signs Located at Points from Which Driver Cannot Get Unobstructed View of Highway.**—Though stop signs, due to the surrounding physical conditions, are located at points from which the driver of a motor vehicle cannot get an unobscured vision of the intersecting highway for a sufficient distance to ascertain whether it can be entered or crossed with reasonable safety, this does not relieve a driver on a servient highway from the duty to look and observe traffic conditions on the dominant highway, and to make such observation, before entering or crossing the same, as may be necessary to determine whether or not it would be reasonably safe to enter or cross such highway. *Edwards v. Vaughn*, 238 N.C. 89, 76 S.E.2d 359 (1953).

**Right of Way.**—While the failure to stop before attempting to cross a through street intersection in violation of a municipal ordinance is negligence per se, a vehicle traveling along the through street does not have the right of way at the intersection if a vehicle from the cross street is already in the intersection before the vehicle traveling along the through street is near enough the intersection to constitute an immediate hazard. *Pearson v. Luther*, 212 N.C. 412, 193 S.E. 739 (1937).

When the driver of an automobile is



required to stop at an intersection he must yield the right of way to an automobile approaching on the intersecting highway, and unless the approaching automobile is far enough away to afford reasonable ground for the belief that he can cross in safety he must delay his progress until the other vehicle has passed. *Matheny v. Central Motor Lines*, 233 N.C. 673, 65 S.E.2d 361 (1951); *Badders v. Lassiter*, 240 N.C. 413, 82 S.E.2d 357 (1954).

#### **Duty of Driver Having Right of Way.**

—The driver on a favored highway protected by a statutory stop sign does not have the absolute right of way in the sense he is not bound to exercise care toward traffic approaching on an intersecting unfavored highway. It is his duty, notwithstanding his favored position, to observe ordinary care, that is, that degree of care which an ordinarily prudent person would exercise under similar circumstances. In the exercise of such duty it is incumbent upon him in approaching and traversing such an intersection (1) to drive at a speed no greater than is reasonable and prudent under the conditions then existing, (2) to keep his motor vehicle under control, (3) to keep a reasonably careful lookout, and (4) to take such action as an ordinarily prudent person would take in avoiding collision with persons or vehicles upon the highway when, in the exercise of due care, danger of such collision is discovered or should have been discovered. *Primm v. King*, 249 N.C. 228, 106 S.E.2d 223 (1958); *King v. Powell*, 252 N.C. 506, 114 S.E.2d 265 (1960); *Stockwell v. Brown*, 254 N.C. 662, 119 S.E.2d 795 (1961).

The driver on a favored highway protected by a statutory stop sign under this section does not have the absolute right of way in the sense he is not bound to exercise care toward traffic approaching on an intersecting unfavored highway. It is his duty, notwithstanding his favored position, to observe ordinary care. *Williamson v. Randall*, 248 N.C. 20, 102 S.E.2d 381 (1958).

The driver of plaintiff's truck on the dominant highway protected by a statutory stop sign did not have the absolute right of way, in the sense he was not bound to exercise the care toward defendant's pickup truck approaching on the intersecting servient road. *Scott v. Darden*, 259 N.C. 167, 130 S.E.2d 42 (1963).

**Proximate Cause Must Be Shown Beyond a Mere Chance.**—Where a conviction of involuntary manslaughter is sought for the failure to observe a positive duty imposed by statute with reference to the

driving of automobiles upon the State highways, the question of proximate cause must be shown beyond a mere chance or casualty. *State v. Satterfield*, 198 N.C. 682, 153 S.E. 155 (1930).

The manifest object of this section is to protect the public by requiring the driver of an automobile upon the public highways of the State to stop and ascertain the circumstances and conditions at highway intersections, particularly with reference to traffic, with a view of determining whether in the exercise of due care he may go upon the intersecting highway with reasonable safety to himself and others, and where the defendant in a prosecution for manslaughter fails to stop, but has knowledge of the conditions and has an unobstructed view of the highway for a long distance, and there is no evidence tending to show that he had violated any other statute or that he was negligent in any other respect, the evidence alone that he had violated the statute in the respect stated is insufficient to take the case to the jury, there being no evidence that the violation of the statute was a proximate cause of the death or in causal relation thereto, and defendant's motion as of nonsuit, made in apt time, should have been granted. *State v. Satterfield*, 198 N.C. 682, 153 S.E. 155 (1930).

**Right to Assume That Automobile Will Stop as Required by Statute.**—The operator of an automobile, traveling upon a designated main traveled or through highway and approaching an intersecting highway, is under no duty to anticipate that the operator of an automobile approaching on such intersecting highway will fail to stop as required by the statute; and, in the absence of anything which gives, or should give notice to the contrary, he will be entitled to assume and to act upon the assumption, even to the last moment, that the operator of the automobile on the intersecting highway will act in obedience to the statute, and stop before entering such designated highway. *Hawes v. Atlantic Ref. Co.*, 236 N.C. 643, 74 S.E.2d 17 (1953); *Caughron v. Walker*, 243 N.C. 153, 90 S.E.2d 305 (1955); *Smith v. Buie*, 243 N.C. 209, 90 S.E.2d 514 (1955); *Jackson v. McCoury*, 247 N.C. 502, 101 S.E.2d 377 (1958); *King v. Powell*, 252 N.C. 506, 114 S.E.2d 265 (1960); *Wooten v. Russell*, 255 N.C. 699, 122 S.E.2d 603 (1961).

While the driver of a car along the dominant highway is entitled to assume that the operator of a car along the intersecting servient highway will stop before entering the intersection, the driver along the dominant highway is nevertheless required to exercise the care of an ordi-



narily prudent person under similar circumstances to keep a reasonably careful lookout, not to exceed a speed which is reasonable and prudent under the circumstances, and to take such care as a reasonably prudent man would exercise to avoid collision when danger of a collision is discovered, or should have been discovered. *Blalock v. Hart*, 239 N.C. 475, 80 S.E.2d 373 (1954); *Caughron v. Walker*, 243 N.C. 153, 90 S.E.2d 305 (1955); *Jackson v. McCoury*, 247 N.C. 502, 101 S.E.2d 377 (1958).

A motorist proceeding along a favored highway is entitled to assume that traffic on an intersecting secondary highway will yield him the right-of-way, and the effect of his right to rely on this assumption is not lost because warning signs have been misplaced or removed. *Kelly v. Ashburn*, 256 N.C. 338, 123 S.E.2d 775 (1962).

**§ 20-158.1. Erection of "yield right-of-way" signs.**—The State Highway Commission, with reference to State highways, and cities and towns with reference to highways and streets under their jurisdiction, are authorized to designate main traveled or through highways and streets by erecting at the entrance thereto from intersecting highways or streets, signs notifying drivers of vehicles to yield the right-of-way to drivers of vehicles approaching the intersection on the main traveled or through highway. Notwithstanding any other provisions of this chapter, except § 20-156, whenever any such yield right-of-way signs have been so erected, it shall be unlawful for the driver of any vehicle to enter or cross such main traveled or through highway or street unless he shall first slow down and yield the right-of-way to any vehicle in movement on the main traveled or through highway or street which is approaching so as to arrive at the intersection at approximately the same time as the vehicle entering the main traveled or through highway or street. No failure to so yield the right-of-way shall be considered negligence or contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to yield the right-of-way may be considered with the other facts in the case in determining whether either party in such action was guilty of negligence or contributory negligence. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than ten dollars (\$10.00) or imprisoned for not more than ten days. (1955, c. 295; 1957, c. 65, s. 11.)

**Section Supplements § 20-158.**—*McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, Inc.*, 248 N.C. 146, 102 S.E.2d 816 (1958).

**Emergency ambulances are expressly ex-**

**Instruction** as to negligence held error since it was counter to the provision of this section. *Stephens v. Johnson*, 215 N.C. 133, 1 S.E.2d 367 (1939).

**Applied** in *Jones v. Bagwell*, 207 N.C. 378, 177 S.E. 170 (1934); *Powell v. Daniel*, 236 N.C. 489, 73 S.E.2d 143 (1952); *Edens v. Carolina Freight Carriers Corp.*, 247 N.C. 391, 100 S.E.2d 878 (1957); *State v. Wells*, 259 N.C. 173, 130 S.E.2d 299 (1963); *Keith v. King*, 263 N.C. 118, 139 S.E.2d 21 (1964).

**Cited** in *Leary v. Norfolk So. Bus Corp.*, 220 N.C. 745, 18 S.E.2d 426 (1942); *Smith v. United States*, 94 F. Supp. 681 (W.D.N.C. 1951); *State v. Bournais*, 240 N.C. 311, 82 S.E.2d 115 (1954); *Curran v. Williams*, 248 N.C. 32, 102 S.E.2d 455 (1958); *Tucker v. Moorefield*, 250 N.C. 340, 108 S.E.2d 637 (1959); *Hunt v. Cranford*, 253 N.C. 381, 117 S.E.2d 18 (1960).

**Accepted** from the requirements of this section. *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

**Quoted** in *Johnson v. Bass*, 256 N.C. 716, 125 S.E.2d 19 (1962).

**§ 20-159. Passing streetcars.**—(a) The driver of a vehicle shall not overtake and pass upon the left any streetcar proceeding in the same direction, whether actually in motion or temporarily at rest, when a travelable portion of the highway exists to the right of such streetcar.

(b) The driver of a vehicle overtaking any railway, interurban or streetcar stopped or about to stop for the purpose of receiving or discharging any passenger, shall bring such vehicle to a full stop not closer than ten feet to the nearest exit of such streetcar and remain standing until any such passenger has boarded such car or reached the adjacent sidewalk, except that where a safety zone has

been established, then a vehicle may be driven past any such railway, interurban or streetcar at a speed not greater than ten miles per hour and with due caution for the safety of pedestrians. (1937, c. 407, s. 121.)

**§ 20-160. Driving through safety zone prohibited.**—The driver of a vehicle shall not at any time drive through or over a safety zone as defined in part one of this article. (1937, c. 407, s. 122.)

**Cross Reference.**—As to definition of safety zone, see § 20-38, subdivision (30).

**§ 20-161. Stopping on highway.** — (a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main traveled portion of any highway, outside of a business or residence district, when it is practicable to park or leave such vehicle standing off of the paved or improved or main traveled portion of such highway: Provided, in no event shall any person park or leave standing any vehicle, whether attended or unattended, upon any highway unless a clear and unobstructed width of not less than fifteen feet upon the main traveled portion of said highway opposite such standing vehicle shall be left for free passage of other vehicles thereon, nor unless a clear view of such vehicle may be obtained from a distance of two hundred feet in both directions upon such highway: Provided further, that in no event shall any person park or leave standing any vehicle, whether attended or unattended, upon any highway bridge: Provided further that in the event that a truck, trailer or semitrailer be disabled upon the highway that the driver of such vehicle shall display, not less than two hundred feet in the front and rear of such vehicle, a warning signal; that during the hours from sunup to sundown a red flag shall be displayed, and after sundown red flares or lanterns. These warning signals shall be displayed as long as such vehicle is disabled upon the highways.

(b) Whenever any peace officer shall find a vehicle standing upon a highway in violation of the provisions of this section, he is hereby authorized to move such vehicle or require the driver or person in charge of such vehicle to move such vehicle to a position permitted under this section.

(c) The provisions of this section shall not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such vehicle in such position. (1937, c. 407, s. 123; 1951, c. 1165, s. 1.)

**This section is inapplicable to a motor vehicle parked in a residential district in a city or town on a street which constitutes no part of the highway system.** *Smith v. Goldsboro Iron & Metal Co.*, 257 N.C. 143, 125 S.E.2d 377 (1962).

**The word "park" means the permitting of such vehicles to remain standing on a public highway or street, while not in use.** *State v. Carter*, 205 N.C. 761, 172 S.E. 415 (1934).

To "park" means something more than a mere temporary or momentary stoppage on the road for a necessary purpose. *Stallings v. Buchan Transp. Co.*, 210 N.C. 201, 185 S.E. 643 (1936); *Morris v. Jenrette Transp. Co.*, 235 N.C. 568, 70 S.E.2d 845 (1952); *Meece v. Dickson*, 252 N.C. 300, 113 S.E.2d 578 (1960); *Saunders v. Warren*, 264 N.C. 200, 141 S.E.2d 308 (1965).

Thus, where the driver of a truck with a

trailer stopped on the highway at night on the right-hand side, with lights burning, because two automobiles in front of him were interlocked in a wreck, and at the time of the collision the truck and trailer had been standing still only a fraction of a minute, and it remained parked for about five minutes thereafter, it was held that at the time of the collision the truck was not parked on the highway within the meaning of this section, and the length of time it remained still after the collision is immaterial to plaintiff's right to recover since it was not the intention of those who drafted the statute to make it a violation of law for a driver of a heavy truck and trailer to stop on his right-hand side of the highway before driving around or by two cars interlocked in a collision on the highway, and around which a number of people were working. *Stallings v. Buchan*

Transp. Co., 210 N.C. 201, 185 S.E. 643 (1936).

Starting and stopping on a highway in accordance with the exigencies of the occasion is an incident to the right of travel, and the word "park" and the words "leave standing" as used in this section are modified by the words "whether attended or unattended" so that they are synonymous, and neither term includes a mere temporary stop for a necessary purpose when there is no intent to break the continuity of the travel. *Peoples v. Fulk*, 220 N.C. 635, 18 S.E.2d 147 (1942); *Morris v. Jenrette Transp. Co.*, 235 N.C. 568, 70 S.E.2d 845 (1952); *Royal v. McClure*, 244 N.C. 186, 92 S.E.2d 762 (1956); *Meece v. Dickson*, 252 N.C. 300, 113 S.E.2d 578 (1960).

The stopping of a bus on the hard surface of a highway outside of a business or residential district for the purpose of taking on a passenger is not parking or leaving the vehicle standing within the meaning of the terms as used in this section, *Peoples v. Fulk*, 220 N.C. 635, 18 S.E.2d 147 (1942); *Morgan v. Carolina Coach Co.*, 225 N.C. 668, 36 S.E.2d 263 (1945); even though the shoulders of the highway at the scene are of sufficient width to permit the bus to be stopped thereon. *Leary v. Norfolk So. Bus. Corp.*, 220 N.C. 745, 18 S.E.2d 426 (1942). See also *Conley v. Pearce-Young-Angel Co.*, 224 N.C. 211, 29 S.E.2d 740 (1944); *Banks v. Shepard*, 230 N.C. 86, 52 S.E.2d 215 (1949).

"I cannot authoritatively define 'parking' in a dissenting opinion, but it seems to me clear that a car is parked when those in charge stop it upon a highway and intentionally leave it upon the concrete to pursue some activity other than that concerned with the car and its operation, however commendable it may be." *Beck v. Hooks*, 218 N.C. 105, 10 S.E.2d 608 (1940) (dis. op.).

The uncontradicted statement of defendant, offered in evidence by plaintiff through its witness, and explained by the testimony of defendant, refuted the theory of "a parking" of defendant's tractor-trailer at the place of the collision in question, within the meaning of subsection (a) of this section. *Harris Express v. Jones*, 236 N.C. 542, 73 S.E.2d 301 (1952).

**Meaning of Practicable.**—It has been held that the word "practicable" as used in such a statute is not synonymous with "convenient"; to be sure it is not to be construed as meaning "possible." *Cronenberg v. United States*, 123 F. Supp. 693 (E.D.N.C. 1954).

**"Truck" Includes United States Mobile Post-Office Vehicle.**—The word "truck" as used in this section includes a mobile highway post-office vehicle. *Cronenberg v. United States*, 123 F. Supp. 693 (E.D.N.C. 1954).

**"Truck" Does Not Include Three-Quarter Ton Truck.**—The part of this section requiring the driver of a truck, trailer or semitrailer to display red flares or lanterns when disabled upon the highway is not applicable to a three-quarter ton truck. *Freshman v. Stallings*, 128 F. Supp. 179 (E.D.N.C. 1955).

This section has no reference to a mere temporary stop for a necessary purpose when there is no intent to break the continuity of the "travel." *Royal v. McClure*, 244 N.C. 186, 92 S.E.2d 762 (1956).

Deputy sheriff did not violate this section when he temporarily stopped his car on the right side of the highway in order to speak to an intoxicated pedestrian. *Skinner v. Evans*, 243 N.C. 760, 92 S.E.2d 209 (1956).

The stopping of a police car on a highway solely to enable police officers to determine whether the driver of another car had a driver's license does not constitute a parking of the police car in violation of subsection (a). *Kinsey v. Town of Kenly*, 263 N.C. 376, 139 S.E.2d 686 (1965).

**But Temporary Stop Must Be for Necessary Purpose.**—A temporary stopping must be for a necessary purpose, and under such conditions that it is impossible to avoid leaving such vehicle in such position, that is, occupying traveled portion of the highway, or not leaving the clearance declared in subsection (a). *Melton v. Crotts*, 257 N.C. 121, 125 S.E.2d 396 (1962).

**Violation of this section is negligence per se.** *Hughes v. Vestal*, 264 N.C. 500, 142 S.E.2d 361 (1965).

The requirement of setting out proper warning flares is absolute and a violation of it is negligence per se. *Barrier v. Thomas & Howard Co.*, 205 N.C. 425, 117 S.E. 626 (1933); *Caulder v. Gresham*, 224 N.C. 402, 30 S.E.2d 312 (1944); and several other cases. The statute requires that red flares or lanterns be displayed "not less than two hundred feet in the front and rear of such vehicle." The flares were placed only 45 feet from the vehicle. *Cronenberg v. United States*, 123 F. Supp. 693 (E.D.N.C. 1954).

A failure to meet the requirements of this section, relating to the display of warning signals when a truck, etc., is disabled on the highway, convicts of negli-



gence which is actionable if such failure was one of the proximate causes of the collision. *Taylor v. United States*, 156 F. Supp. 763 (E.D.N.C. 1957).

**Automobile Need Not Display Warning Signals.**—The requirement of this section with respect to placing "red flares or lanterns" on the highway applies to trucks, trailers or semitrailers disabled on the highway, and not to automobiles. *Rowe v. Murphy*, 250 N.C. 627, 109 S.E.2d 474 (1959).

**But Obligation to Light Vehicle at Night Is Not Affected.**—This section does not conflict with nor reduce the obligation imposed on the operator of a vehicle stopped or parked on the highway at night to light his vehicle as required by §§ 20-129 and 20-134. To the extent that *Meece v. Dickson*, 252 N.C. 300, 113 S.E.2d 578 (1960), may be construed as conflicting, it is overruled. *Melton v. Crotts*, 257 N.C. 121, 125 S.E.2d 396 (1962).

**Parking in a Residential or Business District.**—The parking or leaving standing of any vehicle in a business or residential district is not a violation of this section. *Hammett v. Miller*, 227 N.C. 10, 40 S.E.2d 480 (1946).

**To Be Actionable Negligence Must Be Proximate Cause of Injury.**—Negligence in parking an automobile on a public highway in violation of this section, to be actionable, must be a proximate cause of the injury in suit, and where the plaintiff fails to show by his evidence that such violation was a proximate cause of his injury, a judgment as of nonsuit is properly allowed. *Burke v. Carolina Coach Co.*, 198 N.C. 8, 150 S.E. 636 (1929).

**The parking of a car on the hard surface of a highway at night without a tail-light in violation of statute is sufficient to sustain the jury's affirmative answer upon the issue of actionable negligence, and the question of contributory negligence in failing to see the parked car under the circumstances in time to have avoided the collision is also properly submitted to the jury.** *Lambert v. Caronna*, 206 N.C. 616, 175 S.E. 303 (1934).

**Parking on a paved highway at night, without flares or other warning, is negligence.** *Allen v. Dr. Pepper Bottling Co.*, 223 N.C. 118, 25 S.E.2d 388 (1943).

The fact that the taillight of defendant's truck after a collision was still burning did not excuse him from leaving it on the paved portion of a highway. *Freshman v. Stallings*, 128 F. Supp. 179 (E.D.N.C. 1955).

**Negligent Parking Need Not Be Anticipated.**—Where defendant leaves his truck

unattended, partly on a paved or improved portion of a State highway, between sunset and sunup, without displaying flares or lanterns not less than two hundred feet to the front and rear of the vehicle, it is an act of negligence, and the driver of the car in which plaintiff was riding, traveling at about 30 to 35 miles per hour on his right side of the road under conditions which made it impossible for him to see more than a few feet ahead, although apparently guilty of negligence, is not under the duty of anticipating defendant's negligent parking, so that the concurrent negligence of the two made the resulting collision inevitable and an exception to the denial of a motion of nonsuit cannot be sustained. *Caulder v. Gresham*, 224 N.C. 402, 30 S.E.2d 312 (1944).

**Charge to Jury.**—The charge of the court as to subsection (a) of this section, will not be held for error for the failure to instruct the jury upon the provision in subsection (c), where the defendant's only evidence in excuse of parking was that he had a flat tire, such evidence being insufficient to bring defendant within the exception. *Lambert v. Caronna*, 206 N.C. 616, 175, S.E. 303 (1934).

**Section Not Violated Where Disabled Truck Is Parked on Shoulder of Highway.**—See *State v. McDonald*, 211 N.C. 672, 191 S.E. 733 (1937).

The parking of a disabled vehicle as far as possible on the right shoulder, leaving more than 15 feet upon the main traveled portion of the highway for the free passage of traffic, at a place where the drivers of other cars have a clear view of the parked automobile for a distance of more than 200 feet in both directions, is not a violation of this section. *Rowe v. Murphy*, 250 N.C. 627, 109 S.E.2d 474 (1959).

**Disabled Truck Not Moved to Shoulder of Highway.**—Where one of the truck's tires was flat and the motor was out of commission, but with the man power present the truck could have been removed onto the shoulder, failure to do so constituted negligence. *Freshman v. Stallings*, 128 F. Supp. 179 (E.D.N.C. 1955).

Leaving a disabled marine corps wrecker standing on the highway in the nighttime without lights and warning signals required by § 20-134 and this section constituted negligence. *United States v. First-Citizens Bank & Trust Co.*, 208 F.2d 280 (4th Cir.), affirming *Rosenblatt v. United States*, 112 F. Supp. 114 (E.D.N.C. 1953).

**Negligence Held Proximate Cause of Collision.**—Negligence of the government's servants in failing to provide proper and statutory warning when a mo-

bile highway post-office vehicle became disabled on the highway was held one of the proximate causes of collision and resulting death and injuries. *Cronenberg v. United States*, 123 F. Supp. 693 (E.D.N.C. 1954).

**Right to Assume That Driver of Disabled Truck Will Display Warning Signals.**—A motorist has the right to assume that the driver of any truck becoming disabled on the highway after sundown will display red flares or lanterns as required by this section. *Chaffin v. Brame*, 233 N.C. 377, 64 S.E.2d 276 (1951); *United States v. First-Citizens Bank & Trust Co.*, 208 F.2d 280 (4th Cir.), affirming *Rosenblatt v. United States*, 112 F. Supp. 114 (E.D.N.C. 1953); *Towe v. Stokes*, 117 F. Supp. 880 (M.D.N.C. 1954).

**Driver of disabled truck has reasonable time to display warning signals.** The law will not hold him to be negligent in failing to do that which he has not had time to do. Thus where the plaintiff's car approached before the driver of the defendant's tractor-trailer had time, after it stopped, to get out of the cab, the tractor-trailer was not parked or left standing upon the paved portion of the highway in violation of subsection (a). *Morris v. Jenrette Transp. Co.*, 235 N.C. 568, 70 S.E.2d 845 (1952).

**The provisions of subsection (a) of this section are limited by subsection (c).** *Melton v. Crofts*, 257 N.C. 121, 125 S.E.2d 396 (1962).

**The word "impossible" in subsection (c) must be construed as meaning that the car must be disabled to the extent that it is not reasonably practical to move the car so as to leave such 15 feet for the free passage of other cars.** *Melton v. Crofts*, 257 N.C. 121, 125 S.E.2d 396 (1962).

**"Impossible" is to be construed in a reasonable practical sense.** *Melton v. Crofts*, 257 N.C. 121, 125 S.E.2d 396 (1962).

**The words "such position" at the end of subsection (c) must not be construed as meaning that, if it was possible for the car to be moved at all, it would be beyond the protection of the statute.** "Such position" refers back to the words, "on the paved or improved or main traveled portion of a highway." *Melton v. Crofts*, 257 N.C. 121, 125 S.E.2d 396 (1962).

**Exception in Subsection (c) Is Question for Jury.**—Where there is evidence tending to show that the defendant had parked his truck upon the hard surface of a highway in violation of this section, resulting in injury to the plaintiff, and the defendant claims that under the facts it came within the exception, subsection (c), under the

statute and the facts disclosed by the record the matter should have been submitted to the jury under proper instructions, and the granting of defendant's motion as of nonsuit was error. *Smithwick v. Colonial Pine Co.*, 200 N.C. 519, 157 S.E. 612 (1931).

Whether a puncture or blowout is such disablement of a motor vehicle as to justify the driver in stopping partially on the paved portion of the highway is ordinarily a question for the jury unless the facts are admitted. *Melton v. Crofts*, 257 N.C. 121, 125 S.E.2d 396 (1962).

**Burden of Proving Application of Subsection (c).**—If plaintiff has established a violation of subsection (a) and defendant relies on subsection (c), defendant must carry the burden of justifying his act in stopping at a proper place and for a permissible period of time. *Melton v. Crofts*, 257 N.C. 121, 125 S.E.2d 396 (1962).

**Application Depends upon Facts of Each Case.**—Defendant's claim of protection by virtue of subsection (c) of this section must be tested by the facts of each case. *Melton v. Crofts*, 257 N.C. 121, 125 S.E.2d 396 (1962).

**Evidence Disclosing Contributory Negligence.**—Conceding defendant was negligent in parking the car on the hard surface in violation of this section, the evidence discloses contributory negligence of plaintiff as a matter of law in attempting to pass the parked car without first ascertaining that he could pass the car in safety. *McNair v. Kilmer & Co.*, 210 N.C. 65, 185 S.E. 481 (1936).

**Evidence Not Showing Contributory Negligence.**—Where evidence tended to show that defendant's mud-spattered truck was parked on a dark, foggy morning, with all four wheels on the pavement without lights, flares, or any other mode of signal, and had been so parked for some time, and that plaintiff was compelled to dim his lights when about 20 feet south of defendant's truck, in response to the dimmed lights of an oncoming car the lights of this car partly blinding plaintiff, who collided with the rear of defendant's truck, motion for nonsuit on the ground of contributory negligence was properly refused. *Cummins v. Southern Fruit Co.*, 225 N.C. 625, 36 S.E.2d 11 (1945).

**Nonsuit on Ground of Contributory Negligence Not Warranted.** — Evidence disclosing that plaintiff's automobile was parked on a bridge 40 feet wide, leaving a space of 30 feet for the passage of traffic, that the driver of defendants' bus was blinded by the lights of an approaching car and hit the rear of plaintiff's car, and that the bridge constituted part of a city street

and the parking of cars on the bridge was customary, was held not to warrant nonsuit on the ground of contributory negligence, since even though the parking of the car on the bridge was negligence per se, whether such negligence under the circumstances was a proximate cause of the injury is a question for the jury. *Boles v. Hegler*, 232 N.C. 327, 59 S.E.2d 796 (1950).

**Evidence of Negligence Sufficient to Go to Jury.**—Evidence that a disabled truck was left standing on the hard surface of a highway at night without warning flares or lanterns as required by subsection (a) of this section, and that a car, approaching from the rear, collided with the back of the truck, resulting in injuries to the driver and passengers in the car, is held sufficient to be submitted to the jury on the issue of negligence in each of the actions instituted by the driver and occupants of the car against the driver and owner of the truck. *Wilson v. Central Motor Lines*, 230 N.C. 551, 54 S.E.2d 53 (1949).

**Guest's contributory negligence barred recovery from driver for negligence in parking vehicle in violation of this section.** *Basnight v. Wilson*, 245 N.C. 548, 96 S.E.2d 699 (1957).

§ 20-161.1. Regulation of night parking on highways. — No person parking or leaving standing a vehicle at night on a highway or on a side road entering into a highway shall permit the bright lights of said vehicle to continue burning when such lights face oncoming traffic. (1953, c. 1052.)

**Guest's contributory negligence barred recovery from driver for negligence in parking vehicle in violation of this section.**

§ 20-162. Parking in front of fire hydrant, fire station or private driveway.—No person shall park a vehicle or permit it to stand, whether attended or unattended, upon a highway in front of a private driveway or within fifteen feet in either direction of a fire hydrant or the entrance to a fire station, nor within twenty-five feet from the intersection of curb lines or if none, then within fifteen feet of the intersection of property lines at an intersection of highways; provided, that local authorities may by ordinance decrease the distance within which a vehicle may park in either direction of a fire hydrant. (1937, c. 407, s. 124; 1939, c. 111.)

**Violation of Section a Misdemeanor.**—The violation of this section by parking within 25 feet from the intersection of curb lines at an intersection of highways within a municipality is a misdemeanor, notwithstanding that the prima facie rule of evidence created by § 20-162.1 is invoked. *State v. Rumfelt*, 241 N.C. 375, 85 S.E.2d 398 (1955).

§ 20-162.1. Prima facie rule of evidence for enforcement of parking regulations.—Whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found upon any street, alley or other public place contrary to and in violation of the provisions of any statute or of

As to negligence of one defendant insulating negligence of other, see *McLaney v. Anchor Motor Freight, Inc.*, 236 N.C. 714, 74 S.E.2d 36 (1953).

**Proximate Cause Is Jury Question.**—Whether a violation of this section is the proximate cause of injury in a particular case is ordinarily a question for the jury. *Hughes v. Vestal*, 264 N.C. 500, 142 S.E.2d 361 (1965).

**Evidence Insufficient to Show Violation as Proximate Cause.** — See *Saunders v. Warren*, 264 N.C. 200, 141 S.E.2d 308 (1965).

**Applied in Parkway Bus Co. v. Coble Dairy Prods. Co.**, 229 N.C. 352, 49 S.E.2d 623 (1948); *Parrish v. Bryant*, 237 N.C. 256, 74 S.E. 726 (1953); *Chandler v. Forsyth Royal Crown Bottling Co.*, 257 N.C. 245, 125 S.E.2d 584 (1962); *Carolina Coach Co. v. Cox*, 337 F.2d 101 (4th Cir. 1964).

**Cited in Riggs v. Gulf Oil Corp.**, 228 N.C. 774, 47 S.E.2d 254 (1948); *Thomas v. Thurston Motor Lines*, 230 N.C. 122, 52 S.E.2d 377 (1949); *Keener v. Beal*, 246 N.C. 247, 98 S.E.2d 19 (1957); *McDonald v. Patton*, 240 F.2d 424 (4th Cir. 1957); *Correll v. Gaskins*, 263 N.C. 212, 139 S.E.2d 202 (1964).

*Basnight v. Wilson*, 245 N.C. 548, 96 S.E.2d 699 (1957).

**Rule of Evidence in § 20-162.1 Applies.**

—The prima facie rule of evidence created by § 20-162.1 is applicable to prosecutions for violation of this section. *State v. Rumfelt*, 241 N.C. 375, 85 S.E.2d 398 (1955).

**Cited in Basnight v. Wilson**, 245 N.C. 548, 96 S.E.2d 699 (1957).



any municipal ordinance limiting the time during which any such vehicle may be parked or prohibiting or otherwise regulating the parking of any such vehicle, it shall be prima facie evidence in any court in the State of North Carolina that such vehicle was parked and left upon such street, alley or public way or place by the person, firm or corporation in whose name such vehicle is then registered and licensed according to the records of the department or agency of the State of North Carolina, by whatever name designated, which is empowered to register such vehicles and to issue licenses for their operation upon the streets and highways of this State; provided, that no evidence tendered or presented under the authorization contained in this section shall be admissible or competent in any respect in any court or tribunal, except in cases concerned solely with violation of statutes or ordinances limiting, prohibiting or otherwise regulating the parking of automobiles or other vehicles upon public streets, highways, or other public places.

Any person convicted pursuant to this section shall be subject to a penalty of \$1.00. (1953, c. 879, ss. 1, 1½.)

**Editor's Note.**—The act inserting this section exempted Madison and Sampson counties. But Session Laws 1953, c. 978, made the section applicable to Sampson County.

For brief comment on this section, see 31 N.C.L. Rev. 410 (1953).

**Purpose of Section.**—In *State v. Scoggin*, 236 N.C. 19, 72 S.E.2d 54 (1952), the Supreme Court said: "We should not, in the absence of a legislative rule of evidence to the contrary, consider mere ownership of a motor vehicle, parked in violation of a city ordinance, and no more, sufficient to sustain a criminal conviction." It seems apparent that as a result of this decision and the language quoted above therefrom, the General Assembly at its 1953 Session enacted the statute which is

now this section. *State v. Rumpfelt*, 241 N.C. 375, 85 S.E.2d 398 (1955).

**Creates No Criminal Offense but Prescribes Rule of Evidence.**—This section creates no criminal offense, but prescribes that when the prima facie rule of evidence therein set forth is relied upon by the State in a criminal prosecution, the punishment shall be a penalty of \$1.00. *State v. Rumpfelt*, 241 N.C. 375, 85 S.E.2d 398 (1955).

The word "penalty" is used in this section in the broad sense of punishment and not in the sense of a penalty recoverable in a civil action. *State v. Rumpfelt*, 241 N.C. 375, 85 S.E.2d 398 (1955).

**Section Applicable to Violation of § 20-162.**—See note to § 20-162.

**§ 20-163. Motor vehicle left unattended; brakes to be set and engine stopped.**—No person having control or charge of a motor vehicle shall allow such vehicle to stand on any highway unattended without first effectively setting the brakes thereon and stopping the motor of said vehicle, and, when standing upon any grade, without turning the front wheels of such vehicle to the curb or side of the highway. (1937, c. 407, s. 125.)

**Violation of this section is negligence per se**, but it must be a proximate cause of the injury to be actionable. *Arnett v. Yeago*, 247 N.C. 356, 100 S.E.2d 855 (1957); *Watts v. Watts*, 252 N.C. 352, 113 S.E.2d 720 (1960).

When a vehicle is parked, subsection (b) of § 20-124 and this section require a setting of the brakes, and a violation of these statutes is negligence. *Bundy v. Belue*, 253 N.C. 31, 116 S.E.2d 200 (1960).

**Violation Inferred from Runaway Automobile.**—The fact that an automobile ran down the street for a considerable distance immediately after it was parked, permits the inference that plaintiff's intestate did not turn its front wheels to the curb of the street, as required by § 20-124 and this section. *Watts v. Watts*, 252 N.C. 352, 113 S.E.2d 720 (1960).

**§ 20-164. Driving on mountain highways.**—The driver of a motor vehicle traversing defiles, canyons or mountain highways shall hold such motor vehicle under control and as near the right-hand side of the highway as reasonably possible, and upon approaching any curve where the view is obstructed within

a distance of two hundred feet along the highway, shall give audible warning with a horn or other warning device. (1937, c. 407, s. 126.)

**Applied in** *Horton v. Peterson*, 238 N.C. 446, 78 S.E.2d 181 (1953).

**§ 20-165. Coasting prohibited.**—The driver of a motor vehicle when traveling upon a down grade upon any highway shall not coast with the gears of such vehicle in neutral. (1937, c. 407, s. 127.)

**Violation Negligence Per Se.**—The violation of this section is negligence per se, and, if injury to the violator proximately result therefrom, it would bar his right to recover therefor. *Dillon v. Winston-Salem*, 221 N.C. 512, 20 S.E.2d 845 (1942).

**§ 20-165.1. One-way traffic.**—In all cases where the State Highway Commission has heretofore, or may hereafter lawfully designate any highway or other separate roadway, under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof, it shall be unlawful for any person to willfully drive or operate any vehicle on said highway or roadway except in the direction so indicated by said signs. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned for not more than thirty (30) days. (1957, c. 1177.)

**Editor's Note.** — By virtue of Session Laws 1957, c. 65, s. 11, "State Highway Commission" has been substituted for "State Highway and Public Works Commission."

**Power of State Illustrated.**—This section and § 20-156 (a) illustrate the power

of the State to regulate the time and manner of entering a public highway. *Moses v. State Highway Comm'n*, 261 N.C. 316, 134 S.E.2d 664 (1964).

**Cited in** *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965).

**§ 20-166. Duty to stop in event of accident or collision; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.**—(a) The driver of any vehicle involved in an accident or collision resulting in injury or death to any person shall immediately stop such vehicle at the scene of such accident or collision, and any person violating this provision shall upon conviction be punished as provided in § 20-182.

(b) The driver of any vehicle involved in an accident or collision resulting in damage to property and in which there is not involved injury or death of any person shall immediately stop his vehicle at the scene of the accident or collision and shall give his name, address, operator's or chauffeur's license number and the registration number of his vehicle to the driver or occupants of any other vehicle involved in the accident or collision or to any person whose property is damaged in the accident or collision; provided, if the driver or other occupants of the other vehicle or vehicles involved in the accident or collision or the person or persons whose property is damaged in the accident or collision are not known, the driver shall furnish the information required by this subsection to the nearest available peace officer. Any person violating the provisions of this subsection shall be guilty of a misdemeanor and fined or imprisoned, or both, in the discretion of the court.

(c) The driver of any vehicle involved in any accident or collision resulting in injury or death to any person shall also give his name, address, operator's or chauffeur's license number and the registration number of his vehicle to the person struck or the driver or occupants of any vehicle collided with, and shall render to any person injured in such accident or collision reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person, and it shall be unlawful for any person to violate this provision, and such violator shall be punishable as provided in § 20-182.

(d) Any person who renders first aid or emergency assistance at the scene of

a motor vehicle accident on any street or highway to any person injured as a result of such accident, shall not be liable in civil damages for any acts or omissions relating to such services rendered, unless such acts or omissions amount to wanton conduct or intentional wrongdoing. (1937, c. 407, s. 128; 1939, c. 10, ss. 1, 1½; 1943, c. 439; 1951, cc. 309, 794, 823; 1953, cc. 394, 793; c. 1340, s. 1; 1955, c. 913, s. 8; 1965, c. 176.)

**Editor's Note.**—The 1965 amendment added subsection (d).

For brief comment on the 1953 amendments, see 31 N.C.L. Rev. 419 (1953). As to the effect of the 1939 amendment, see 17 N.C.L. Rev. 349.

**Purpose.**—The purpose of the requirement that a motorist stop and identify himself is to facilitate investigation. *State v. Smith*, 264 N.C. 575, 142 S.E.2d 149 (1965).

**Driver Must Stop at Scene of Accident.**—This section requires the driver of a vehicle involved in an accident to stop at the scene, and in the event the accident involves the injury of any person, it requires him to give his name, address, operator's license and the registration number of his vehicle, and to render reasonable assistance to the injured person. *State v. Brown*, 226 N.C. 681, 40 S.E.2d 34 (1946).

Where defendant admitted that he knew he had hit a man and did not stop or return to the scene, his own testimony disclosed a violation of this section, and his good faith in stopping 200 yards away from the accident and obtaining aid for the injured man before proceeding on his way to his home was immaterial on the issue of guilt or innocence and the exclusion of testimony to this effect was without error. *State v. Brown*, 226 N.C. 681, 40 S.E.2d 34 (1946).

Proof of charge for failure to stop automobile at scene of accident held wholly lacking. *State v. Wall*, 243 N.C. 238, 90 S.E.2d 383 (1955).

**Failure to stop is the gist of the offense.** *State v. Smith*, 264 N.C. 575, 142 S.E.2d 149 (1965).

**Section does not restrict offense to public highway.** *State v. Smith*, 264 N.C. 575, 142 S.E.2d 149 (1965).

**Failure to Stop or Flight from Scene as Evidence of Conscious Wrong.**—A defendant's failure to stop as required by this section, or immediate flight from scene of the injury, affords sufficient evidence of conscious wrong, or dereliction on his part, to warrant the jury in so concluding. *Edwards v. Cross*, 233 N.C. 354, 64 S.E.2d 6 (1951).

**Failure to Give Name, Address, etc.**—Defendant cannot be convicted of charge that he failed to give his name, address, etc., as required by subsection (c) where

the evidence showed that all others involved in the accident were either killed or so seriously injured that there was no one to whom defendant could give a report. *State v. Wall*, 243 N.C. 238, 90 S.E.2d 383 (1955).

Evidence by the State was to the effect that the injured party was unconscious after the accident and, certainly, no useful purpose could have been served by undertaking to give the unconscious man the information required by this section. The law does not require a party to do a vain and useless thing. *State v. Coggin*, 263 N.C. 457, 139 S.E.2d 701 (1965).

**Person Instantly Killed.**—A defendant may not be convicted of failing to give assistance to a person injured in a collision when the evidence discloses that such person was instantly killed in the collision. *State v. Wall*, 243 N.C. 238, 90 S.E.2d 383 (1955).

**Warrant Charging Violation of Subsection (c).**—A warrant which charges that the defendant, while driving a motor vehicle, was involved in an accident and left the scene without complying with the requirements of subsection (c) of this section fails to charge the commission of any criminal offense. *State v. Morris*, 235 N.C. 393, 70 S.E.2d 23 (1952).

**Failure of indictment to designate street or highway on which collision occurred is not fatal.** *State v. Smith*, 264 N.C. 575, 142 S.E.2d 149 (1965).

**Warrant May Cure Defective Indictment in Case Transferred for Jury Trial.**—Where a prosecution for violating this section, a misdemeanor in the exclusive jurisdiction of a municipal-county court, is transferred to the superior court upon defendant's demand for a jury trial, the jurisdiction of the superior court is limited to the charge in the warrant; therefore, the warrant constitutes an essential part of the record, so that any failure of the indictment to identify the property damaged and the owner thereof is cured when the warrant supplies this information, thus affording defendant protection against another prosecution for the same offense. *State v. Smith*, 264 N.C. 575, 142 S.E.2d 149 (1965).

**What State Must Prove to Secure Conviction.**—In order to convict the defendant on a count which charged a violation of



subsection (a) of this section, it was necessary for the State to prove that on the occasion in question, the defendant was the operator of a named automobile which the State contended drove down a given street; that this vehicle was involved in an accident or collision with the alleged victim; and that knowing he had struck the victim, the defendant failed to stop his vehicle immediately at the scene. *State v. Overman*, 257 N.C. 464, 125 S.E.2d 920 (1962).

To secure a conviction on a count which charged a violation of subsection (c), the State was required to prove that the defendant was the operator of a vehicle which had been involved in an accident or collision which resulted in injury to the alleged victim; that defendant failed to give his name, address, operator's license number, and the registration number of his vehicle to the alleged victim; that it was apparent that medical treatment was necessary to the alleged victim but that defendant failed to render him reasonable assistance, including carrying him to a physician or surgeon for medical treatment. *State v. Overman*, 257 N.C. 464, 125 S.E.2d 920 (1962).

If the State satisfied the jury beyond a reasonable doubt that defendant was the driver of an automobile involved in an accident resulting in injuries to the six named persons in the indictment, and did unlawfully, wilfully, and feloniously fail to stop such automobile at the scene of the accident, it would be sufficient to justify the conviction of the defendant on the first count in the indictment; it would not be necessary for the State to prove that all of the six named persons were killed, as alleged in the indictment. *State v. Wilson*, 264 N.C. 373, 141 S.E.2d 801 (1965).

**Absence of Fault No Defense.**—Absence of fault on the part of the driver is not a defense to the charge of failure to stop. *State v. Smith*, 264 N.C. 575, 142 S.E.2d 149 (1965).

**Knowledge of Accident Is Essential Element of Offense.**—Knowledge of the driver that his vehicle had been involved in an accident resulting in injury to a person is an essential element of the offense of "hit and run driving." *State v. Ray*, 229 N.C. 40, 47 S.E.2d 494 (1948).

**Evidence Sufficient for Jury.**—Where all the evidence tended to show that the car of the prosecuting witness was struck by a car which was traveling at the time of the accident with its left wheels over the center line of the highway, that an occupant in the car of the prosecuting witness was injured, and that the car which col-

lided with her car failed to stop after the collision, in violation of this section, and the State's circumstantial evidence, including marks on the highway leading uninterruptedly from the point of collision to a car parked at defendant's place of business, which defendant admitted to be his, the condition of defendant's car, a hub cap and other automobile parts found at the scene of the collision which were missing from defendant's car, and other circumstances tending to show efforts on the part of defendant to conceal the identity of his car as the one involved in the collision, together with testimony by defendant that no one else had driven his car on the evening in question, it was held sufficient to have been submitted to the jury on the question of defendant's guilt, and his motions for judgment as of nonsuit were held properly refused. *State v. King*, 219 N.C. 667, 14 S.E.2d 803 (1941).

Evidence held sufficient to take case to jury as to whether defendant failed to render reasonable assistance to injured persons as required by this section. *State v. Wall*, 243 N.C. 238, 90 S.E.2d 383 (1955).

**Instruction.**—In a prosecution for "hit and run driving" an instruction that defendant was charged with the violation of one of the motor vehicle statutes designed for the protection of life and property, cannot be held for error, the statement not being related to any fact in issue or any evidence introduced in the case, and containing no inference as to the guilt or innocence of defendant, it further appearing that the court correctly charged upon the presumption of innocence and the burden of proof. *State v. King*, 219 N.C. 667, 14 S.E.2d 803 (1941).

The defendant was entitled to have the trial judge instruct the jury that the burden was on the State to establish beyond a reasonable doubt that the defendant knowingly or intentionally failed to render reasonable assistance to his injured passenger, including the carrying of him to a physician or surgeon for medical or surgical treatment if it was apparent that such treatment was necessary. *State v. Coggin*, 263 N.C. 457, 139 S.E.2d 701 (1965).

**Guest Passenger Not Ipso Facto Guilty as Aider and Abettor.**—If the owner and driver of an automobile fails to stop and give his name, address and license number, after an accident resulting in injury to a person, in violation of this section, an occupant of the car, merely because he is a guest passenger in the car driven by the owner, is not guilty as an aider and abet-

tor. *State v. Dutch*, 246 N.C. 438, 98 S.E.2d 475 (1957).

**Former Jeopardy.**—In a prosecution for hit and run driving the trial court properly refused to submit an issue of former acquittal based upon a prior prosecution for involuntary manslaughter arising out of the same collision, since the offenses are different, both in law and in fact, and therefore the plea of former jeopardy is inapposite as a matter of law. *State v. Williams*, 229 N.C. 415, 50 S.E.2d 4 (1948).

Applied in *State v. Smith*, 238 N.C. 82,

76 S.E.2d 363 (1953); *State v. Nall*, 239 N.C. 60, 79 S.E.2d 354 (1953); *State v. Hollingsworth*, 263 N.C. 158, 139 S.E.2d 235 (1964).

Cited in *State v. Newton*, 207 N.C. 323, 177 S.E. 184 (1934); *State v. Midgett*, 214 N.C. 107, 198 S.E. 613 (1938); *Leary v. Norfolk So. Bus Corp.*, 220 N.C. 745, 18 S.E.2d 426 (1942); *State v. Collins*, 247 N.C. 248, 100 S.E.2d 492 (1957); *Punch v. Landis*, 258 N.C. 114, 128 S.E.2d 224 (1962).

### § 20-166.1. Reports and investigations required in event of collision.

—(a) The driver of a vehicle involved in a collision resulting in injury to or death of any person or total property damage to an apparent extent of one hundred dollars (\$100.00) or more shall immediately, by the quickest means of communication, give notice of the collision to the local police department if the collision occurs within a municipality, or if the collision occurs outside of a municipality to the nearest station of the State Highway Patrol or to the office of the sheriff or other qualified rural police of the county wherein the collision occurred.

(b) The driver of any vehicle involved in a collision resulting in injury to or death of any person or total property damage to an apparent extent of one hundred dollars (\$100.00) or more, shall, within twenty-four hours after the collision, forward a written report of the collision to the Department.

(c) Notwithstanding any other provisions of this section, the driver of any motor vehicle which collides with another motor vehicle left parked or unattended on any street or highway of this State shall immediately report the collision to the owner of such parked or unattended motor vehicle. Such report shall include the time, date and place of the collision, the driver's name, address, operator's or chauffeur's license number and the registration number of the vehicle being operated by the driver at the time of the collision, and such report may be oral or in writing.

In the event the driver is for any reason unable to make the report required by the preceding paragraph, such driver shall make and file a report of the collision in the same manner and subject to the same requirements as in the case of a collision as provided in subsections (a) and (b) of this section. Notwithstanding other provisions of this section, any report made pursuant to either paragraph of this subsection shall be competent in any civil action for the sole purpose of establishing the identity of the person operating the moving vehicle at the time of colliding with the parked or unattended vehicle. The other provisions of this section shall be applicable to such reports except when the same are in conflict with those specifically set out in this subsection. Provided, the report required in the event that the driver is unable to report the collision to the owner of the parked or unattended vehicle shall be made in all cases regardless of the amount of the damage incurred.

Any person who violates this subsection is guilty of a misdemeanor and shall be punishable by fine or imprisonment, or both, in the discretion of the court.

(d) The Department may require the driver of a vehicle involved in a collision which is required to be reported by this section to file a supplemental report when the original report is insufficient in the opinion of the Department, and the Department may require witnesses of a collision to render reports.

(e) It shall be the duty of the State Highway Patrol or the sheriff's office or other qualified rural police to investigate all collisions required to be reported by this section when the collisions occur outside the corporate limits of a city or town; and it shall be the duty of the police department of each city or town



to investigate all collisions required to be reported by this section when the collisions occur within the corporate limits of the city or town. Every law enforcement officer who investigates a collision as required by this subsection, whether the investigation is made at the scene of the collision or by subsequent investigations and interviews, shall, within twenty-four hours after completing the investigation, forward a written report of the collision to the Department if the collision occurred outside the corporate limits of a city or town, or to the police department of the city or town if the collision occurred within the corporate limits of such city or town. Police departments should forward such reports to the Department within ten days of the date of the collision. Provided, when a collision occurring outside the corporate limits of a city or town is investigated by a duly qualified law enforcement officer other than a member of the State Highway Patrol, as permitted by this section, such other officer shall forward a written report of the collision to the office of the sheriff or rural police of the county wherein the collision occurred and the office of the sheriff or rural police shall forward such reports to the Department within ten days of the date of the collision. The reports by law enforcement officers shall be in addition to, and not in place of, the reports required of drivers by this section.

When any person involved in an automobile collision shall die as a result of said collision within a period of twelve months following said collision, and such death shall not have been reported in the original report, it shall be the duty of investigating enforcement officers to file a supplemental report setting forth the death of such person.

(f) Every person holding the office of coroner in this State shall report to the Department the death of any person as a result of a collision involving a motor vehicle and the circumstances of the collision within five days following such death. Every hospital shall notify the coroner of the county in which the collision occurred of the death within the hospital of any person who dies as a result of injuries apparently sustained in a collision involving a motor vehicle.

(g) With respect to a collision between a common carrier and another vehicle, which collision is required to be reported by this section, the common carrier shall make a written report of the collision to the Department within ten days from the date of the collision, and the report shall be in addition to the report required of the driver. When the original report submitted by a common carrier is insufficient in the opinion of the Department, the Department may require it to file a supplemental report.

(h) The Department shall prepare and shall upon request supply to police, coroners, sheriffs, and other suitable agencies, or individuals, forms for collision reports calling for sufficiently detailed information to disclose with reference to a highway collision the cause, conditions then existing, and the persons and vehicles involved. All collision reports required by this section shall be made on forms supplied or approved by the Department.

(i) All collision reports, including supplemental reports, above mentioned, except those made by State, city or county police, shall be without prejudice and shall be for the use of the Department and shall not be used in any manner as evidence, or for any other purpose in any trial, civil or criminal, arising out of such collision except that the Department shall furnish upon demand of any court a properly executed certificate stating that a particular collision report has or has not been filed with the Department solely to prove a compliance with this section.

The reports made by State, city, or county police, and coroners but no other reports required under this section shall be subject to the inspection of members of the general public at all reasonable times, and the Department shall furnish a copy of any such report to any member of the general public who shall request the same, upon receipt of a fee of one dollar (\$1.00) for a certified copy, or fifty cents (50¢) for an uncertified copy. The Department is authorized to furnish without charge to departments of the governments of the United States,



states, counties, and cities certified or uncertified copies of such collision reports for official use. Funds received under the provisions of this subsection shall be used by the Department to defray the costs of furnishing copies of reports authorized by this section and shall be in addition to any funds appropriated by the General Assembly.

Nothing herein provided shall prohibit the Department from furnishing to interested parties only the name or names of insurers and insured and policy number shown upon any reports required under this section.

(j) The Department shall receive collision reports required to be made by this section and may tabulate and analyze such reports and publish annually, or at more frequent intervals, statistical information based thereon as to the number, cause and location of highway collisions.

Based upon its findings after analysis, the Department may conduct further necessary detailed research to determine more fully the cause and control of highway collisions. It may further conduct experimental field tests within areas of the State from time to time to prove the practicability of various ideas advanced in traffic control and collision prevention. (1953, c. 1340, s. 2; 1955, c. 913, s. 9; 1963, c. 1249; 1965, c. 577.)

**Cross Reference.**—See note to § 20-166.

**Editor's Note.**—The 1963 amendment deleted the word "certified" formerly preceding the word "copy" near the middle of the first sentence of the second paragraph of subsection (i), added "for a certified copy, or fifty cents (50¢) for an uncertified copy" at the end of such sentence, and added the last sentence of the second paragraph in subsection (i).

The 1965 amendment added the third paragraph in subsection (i).

For brief comment on this section, see 31 N.C.L. Rev. 419 (1953).

**Applied in** *Lane v. Iowa Mut. Ins. Co.*, 258 N.C. 318, 128 S.E.2d 398 (1962).

**Stated in** *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

**Cited in** *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**§ 20-167. Vehicles transporting explosives.**—Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

- (1) Said vehicle shall be marked or placarded on each side and the rear with the word "Explosives" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four inches square marked with the word "Danger" in white letters six inches high.
- (2) Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.
- (3) The Commissioner is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highways as he shall deem advisable for the protection of the public. (1937, c. 407, s. 129.)

**Cross Reference.**—As to provision that vehicles transporting motor fuels shall be labelled, see § 119-41.

**Cited in** *Latham v. Elizabeth City Orange Crush Bottling Co.*, 213 N.C. 158, 195 S.E. 372 (1938).

**§ 20-168. Drivers of State, county and city vehicles subject to provisions of this article.**—The provisions of this article applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by this State or any political subdivisions thereof, or of any city, town or district, except persons, teams, motor vehicles and other equipment while actually engaged in work on the surface of the road, but not when traveling to or from such work. (1937, c. 407, s. 130.)

**Cited in** *Babbs v. Eury*, 206 N.C. 679, 175 S.E. 100 (1934).

**§ 20-169. Powers of local authorities.** — Local authorities, except as expressly authorized by § 20-141 and § 20-158, shall have no power or authority to alter any speed limitations declared in this article or to enact or enforce any rules or regulations contrary to the provisions of this article, except that local authorities shall have power to provide by ordinances for the regulation of traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or continuous and may prohibit other than one-way traffic upon certain highways, and may regulate the use of the highways by processions or assemblages and except that local authorities shall have the power to regulate the speed of vehicles on highways in public parks, but signs shall be erected giving notices of such special limits and regulations. Signaling devices of a stop light nature erected pursuant to this section and which emit alternate red and green lights shall be so arranged and placed that the red light shall appear at the top and the green light shall appear at the bottom of the signaling unit. Provided, that all traffic signs, signals, markings, islands, and all other traffic control devices installed or erected on streets or highways on the State highway system within the corporate limits of a municipality shall be subject to the approval of the State Highway Commission and be installed or erected in substantial conformance with the specifications set forth in the Manual on Uniform Traffic Control Devices for Streets and Highways, or any subsequent revisions of the same, published by the United States Department of Commerce, Bureau of Public Roads and dated June, 1961. Provided further that the State Highway Commission is authorized and directed to assume the cost of installing and erecting such traffic control devices provided the same are installed and erected with the approval of the State Highway Commission and in conformity with this section, and the State Highway Commission is authorized and directed to assume the costs of altering existing traffic control devices on the State highway system to conform to the said specifications set out above. (1937, c. 407, s. 131; 1949, c. 947, s. 2; 1955, c. 384, s. 2; 1963, c. 559.)

**Local Modification.** — **City of Greensboro:** 1953, c. 1075.

**Editor's Note.**—For application of former statute prohibiting ordinance in conflict, see *State v. Freshwater*, 183 N.C. 762, 111 S.E. 161 (1922).

The 1963 amendment added the two provisos at the end of the section.

**Automatic Traffic Control Signals.**—In consequence of this section, a town acted within the limits of its authority as a municipal corporation in installing its automatic traffic control signals and enacting an ordinance to compel their observance. *Cox v. Hennis Freight Lines*, 236 N.C. 72, 72 S.E.2d 25 (1952).

This section authorizes municipal corporations to install automatic traffic control signals and compel their observance by ordinance. *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

**Ambulances May Be Required to Observe Lights.**—The provisions of this section are sufficiently broad to authorize the adoption of an ordinance requiring ambulances to observe traffic lights. *Upchurch*

*v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

**Violation of Ordinance Negligence Per Se.** — The violation of a valid ordinance adopted pursuant to this section requiring a motorist to stop in obedience to a red traffic control signal is negligence per se. *Currin v. Williams*, 248 N.C. 32, 102 S.E.2d 455 (1958).

**Legal Rights Depend on Ordinance.**—When automatic traffic control signals are installed pursuant to municipal ordinance authorized by this section, the respective rights of motorists depend upon the provisions of the particular ordinance authorizing such installation. *Cogdell v. Taylor*, 264 N.C. 424, 142 S.E.2d 36 (1965).

**Allegation and Proof of Ordinance.**—Before legal rights may be predicated on an ordinance regulating traffic by means of automatic signal control devices, such an ordinance must be alleged and established by proper evidence. *Smith v. Buie*, 243 N.C. 209, 90 S.E.2d 514 (1955).

**Cited in** *Stewart v. Yellow Cab Co.*, 225 N.C. 654, 36 S.E.2d 256 (1945).

**§ 20-170. This article not to interfere with rights of owners of real property with reference thereto.**—Nothing in this article shall be con-

strued to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner, and not as matter of right from prohibiting such use nor from requiring other or different or additional conditions than those specified in this article or otherwise regulating such use as may seem best to such owner. (1937, c. 407, s. 132.)

**§ 20-171. Traffic laws apply to persons riding animals or driving animal-drawn vehicles.** — Every person riding an animal or driving any animal drawing a vehicle upon a highway shall be subject to the provisions of this article applicable to the driver of a vehicle, except those provisions of the article which by their nature can have no application. (1939, c. 275.)

### Part 11. Pedestrians' Rights and Duties.

**§ 20-172. Pedestrians subject to traffic control signals.**—Pedestrians shall be subject to traffic control signals at intersections as heretofore declared in this article, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in part eleven of this article. (1937, c. 407, s. 133.)

**Duty to Charge Sections in Civil Actions.**—It is the duty of the court to charge the duty of drivers to pedestrians, imposed by this and the following sections, in an action for damages for their violation and this error is not cured by a general charge as to the use of necessary prudence, and is reversible even in the absence of a

prayer for more specific instructions. *Bowen v. Schnibben*, 184 N.C. 248, 114 S.E. 170 (1922).

**Quoted in** *Spencer v. McDowell Motor Co.*, 236 N.C. 239, 72 S.E.2d 598 (1952).

**Cited in** *Metcalf v. Foister*, 232 N.C. 355, 61 S.E.2d 77 (1950).

**§ 20-173. Pedestrians' right-of-way at crosswalks.** — (a) Where traffic control signals are not in place or in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in part eleven of this article.

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle. (1937, c. 407, s. 134.)

**Relative Rights of Pedestrians and Motorists in Absence of Signals.**—In the absence of signals controlling traffic, the relative rights of pedestrians and motorists are prescribed by this section and § 20-174. *Griffin v. Pancoast*, 257 N.C. 52, 125 S.E.2d 310 (1962).

Both pedestrian and motorist have the right to assume the other will obey the rules of the road and accord the right-of-way to the one having that privilege. *Griffin v. Pancoast*, 257 N.C. 52, 125 S.E.2d 310 (1962).

**Pedestrian's Right-of-Way Not Affected by Failure to Mark Crosswalk.**—If a pedestrian was crossing at an intersection, as defined in § 20-38 (12), he had the right-of-

way, and that right was not affected by the failure to mark a place at the intersection for pedestrians to use in crossing. *Griffin v. Pancoast*, 257 N.C. 52, 125 S.E.2d 310 (1962).

**Applied in** *Keaton v. Blue Bird Taxi Co.*, 241 N.C. 589, 86 S.E.2d 93 (1955); *Falls v. Williams*, 261 N.C. 413, 134 S.E.2d 670 (1964); *Blake v. Mallard*, 262 N.C. 62, 136 S.E.2d 214 (1964); *Nix v. Earley*, 263 N.C. 795, 140 S.E.2d 402 (1965).

**Cited in** *Leary v. Norfolk So. Bus Corp.*, 220 N.C. 745, 18 S.E.2d 426 (1942); *Spencer v. McDowell Motor Co.*, 236 N.C. 239, 72 S.E.2d 598 (1952); *Reeves v. Campbell*, 264 N.C. 224, 141 S.E.2d 296 (1965).

**§ 20-174. Crossing at other than crosswalks.**—(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.



(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(d) It shall be unlawful for pedestrians to walk along the traveled portion of any highway except on the extreme left-hand side thereof, and such pedestrians shall yield the right-of-way to approaching traffic.

(e) Notwithstanding the provisions of this section, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway. (1937, c. 407, s. 135.)

**Cross Reference.**—See note to § 20-173.

**Crossing between Adjacent Intersections at Which Traffic Control Signals Are in Operation.**—It is unlawful for a pedestrian to cross a street between intersections at which traffic lights are maintained unless there is a marked crosswalk between the intersections at which he may cross and on which he has the right-of-way over vehicles, and his failure to observe the statutory requirement is evidence of negligence but not negligence per se. *Templeton v. Kelley*, 216 N.C. 487, 5 S.E.2d 555 (1939). See also *Templeton v. Kelley*, 215 N.C. 577, 2 S.E.2d 696 (1939); *Bass v. Roberson*, 261 N.C. 125, 134 S.E.2d 157 (1964).

It is unlawful for a pedestrian to cross between intersections at which traffic control signals are in operation except in a marked crosswalk, but where a pedestrian violates this provision a motorist is nonetheless required to exercise due care to avoid colliding with him. *State v. Call*, 236 N.C. 333, 72 S.E.2d 752 (1952).

**Duty of Pedestrian to Yield Right-of-Way.** — It is the duty of pedestrian, in crossing highway at a point other than within a marked crosswalk or within an unmarked crosswalk at an intersection, to yield right-of-way to truck approaching upon the roadway. *Tysinger v. Coble Dairy Prods.*, 225 N.C. 717, 36 S.E.2d 246 (1945).

A pedestrian crossing the highway at a place which is not within a marked crosswalk or within an unmarked crosswalk at an intersection, is under duty to yield the right-of-way to vehicles along the highway, subject to the duty of a motorist to exercise due care to avoid colliding with any pedestrian and to give warning by sounding horn whenever necessary. *Garmon v. Thomas*, 241 N.C. 412, 85 S.E.2d 589 (1955).

If a pedestrian was not injured at an intersection but was struck when he stepped into a street at some point between one

intersection and the next, the motorist would have the right-of-way. This right-of-way would, of course, be subject to the provisions of subsection (e). *Griffin v. Pancoast*, 257 N.C. 52, 125 S.E.2d 310 (1962).

**And to Keep Timely Lookout.**—It is the duty of pedestrians to look before starting across a highway and, in the exercise of reasonable care for their own safety, to keep a timely lookout for approaching motor traffic on the highway to see what should have been seen and could have been seen if they had looked before starting across the highway. *Rosser v. Smith*, 260 N.C. 647, 133 S.E.2d 499 (1963).

**Motorist May Assume Pedestrian Will Obey Law.**—Where a pedestrian elects not to cross an intersection at a point where he has the right-of-way, but at a point where the motorist has the right-of-way, the motorist has the right to assume, until put on notice to the contrary, that the pedestrian will obey the law and yield the right-of-way. *Jenkins v. Thomas*, 260 N.C. 768, 133 S.E.2d 694 (1963).

**Pedestrian Need Not Yield Right-of-Way at Unmarked Intersection.** — An instruction placing the duty upon a pedestrian to yield the right-of-way to vehicles in traversing a highway at an unmarked intersection of highways must be held for error. *Gaskins v. Kelly*, 228 N.C. 697, 47 S.E.2d 34 (1948).

A pedestrian crossing an intersection as defined by § 20-38 (12), even though there is no marked crosswalk at that point, has the right-of-way over a motorist traversing the intersection. *Jenkins v. Thomas*, 260 N.C. 768, 133 S.E.2d 694 (1963).

**Walking on Traveled Portion of Highway.** — Evidence established contributory negligence in that it disclosed that deceased was walking on the traveled portion of the highway otherwise than on his extreme left-hand side thereof, as required by this section. *Miller v. Lewis & Holmes*

Motor Freight Corp., 218 N.C. 464, 11 S.E.2d 300 (1940).

Where the evidence failed to sustain plaintiff's allegation that his intestate was walking along the edge of the highway on his left side at the place provided by law and was struck by a board projecting from defendants' truck, defendants' motion to nonsuit was properly allowed for failure of plaintiff to establish negligence proximately causing the fatal injury. *Pack v. Auman*, 220 N.C. 704, 18 S.E.2d 247 (1942).

It is unlawful to walk on the right-hand shoulder of a highway along the traveled portion thereof. *Simpson v. Wood*, 260 N.C. 157, 132 S.E.2d 369 (1963).

A pedestrian walking on the right-hand side of the highway, along the traveled portion thereof, does not have to be on the hard surface or the traveled portion thereof to be in violation of this section. *Simpson v. Wood*, 260 N.C. 157, 132 S.E.2d 369 (1963).

Evidence that plaintiff was walking about two feet from the pavement on the right-hand side of the highway was sufficient to establish a violation of this section, which was evidence of negligence to be considered along with the other facts and circumstances involved in determining whether or not the plaintiff was guilty of contributory negligence. *Simpson v. Wood*, 260 N.C. 157, 132 S.E.2d 369 (1963).

**Violation of Section Not Negligence Per Se.**—The violation by a pedestrian of subsections (a), (b) and (e) of this section is not negligence per se, but is evidence to be considered along with other evidence upon the question of such pedestrian's negligence. *Moore v. Bezalla*, 241 N.C. 190, 84 S.E.2d 817 (1954); *Simpson v. Curry*, 237 N.C. 260, 74 S.E.2d 649 (1953).

**Pedestrian Held Guilty of Contributory Negligence.**—Plaintiff was guilty of contributory negligence as a matter of law in failing to yield the right-of-way to defendant's vehicle, which he should have seen in time to have avoided the injury if he had exercised reasonable care for his own safety and kept a timely lookout. *Garmon v. Thomas*, 241 N.C. 412, 85 S.E.2d 589 (1955).

The failure of a pedestrian to yield the right-of-way as required by subsection (a) is not contributory negligence per se, but is evidence to be considered with other evidence in the case upon the issue. *Citizens Nat'l Bank v. Phillips*, 236 N.C. 470, 73 S.E.2d 323 (1952); *Simpson v. Curry*, 237 N.C. 260, 74 S.E.2d 649 (1953); *Goodson v. Williams*, 237 N.C. 291, 74 S.E.2d 762 (1953); *Landini v. Steelman*, 243 N.C.

146, 90 S.E.2d 377 (1955); *Gamble v. Sears*, 252 N.C. 706, 114 S.E.2d 677 (1960).

It is to be left to the jury to consider a violation of this section as evidence of negligence along with the other evidence in determining whether or not a pedestrian contributed to his own injury and was, therefore, guilty of contributory negligence. *Simpson v. Wood*, 260 N.C. 157, 132 S.E.2d 369 (1963).

The failure of a pedestrian crossing a roadway at a point other than a crosswalk to yield the right-of-way to a motor vehicle is not contributory negligence per se; it is only evidence of negligence. *Holloway v. Holloway*, 262 N.C. 258, 136 S.E.2d 559 (1964); *Blake v. Mallard*, 262 N.C. 62, 136 S.E.2d 214 (1964).

However, the court will nonsuit a plaintiff-pedestrian on the ground of contributory negligence when all the evidence so clearly establishes his failure to yield the right-of-way as one of the proximate causes of his injuries that no other reasonable conclusion is possible. *Blake v. Mallard*, 262 N.C. 62, 136 S.E.2d 214 (1964).

**Duty to Avoid Striking Pedestrian Who Fails to Yield Right-of-Way.**—Even though a pedestrian failed to yield the right-of-way as required by this section, it was the duty of the driver of an approaching vehicle, both at common law and under the express provisions of subsection (e), to "exercise due care to avoid colliding with" the pedestrian. *Simpson v. Curry*, 237 N.C. 260, 74 S.E.2d 649 (1953); *Landini v. Steelman*, 243 N.C. 146, 90 S.E.2d 377 (1955); *Gamble v. Sears*, 252 N.C. 706, 114 S.E.2d 677 (1960).

It is the duty of a motor vehicle operator both at common law and under the express provisions of this section to "exercise due care to avoid colliding" with pedestrians on the highway. *Rosser v. Smith*, 260 N.C. 647, 133 S.E.2d 499 (1963).

A person walking along a public highway pushing a handcart is a pedestrian within the purview of subsection (d) of this section, and is not a driver of a vehicle within the meaning of §§ 20-146 and 20-149. *Lewis v. Watson*, 229 N.C. 20, 47 S.E.2d 484 (1948).

**Handcart Is Not "Vehicle."**—A person pushing a handcart along the highway is a pedestrian within the purview of subsection (d) of this section, since a handcart, being propelled solely by human power, is not a vehicle as defined by § 20-38 (38). *Lewis v. Watson*, 229 N.C. 20, 47 S.E.2d 484 (1948).

**Motorist Must Use Due Care to Avoid Striking Pedestrian on Wrong Side of**



**Highway.**—The evidence disclosed that intestate was pushing his handcart on the right-hand side of the highway in violation of subsection (d) of this section, and was struck from the rear by a vehicle traveling in the same direction. Plaintiff's evidence was to the effect that the operator of the vehicle was traveling at excessive speed and failed to keep a proper lookout. It was held that the fact that intestate was traveling on the wrong side of the road did not render him guilty of contributory negligence as a matter of law upon the evidence, since the operator of a vehicle is under the duty notwithstanding the provisions of subsection (d) to exercise due care to avoid colliding with any pedestrian upon the highway. *Lewis v. Watson*, 229 N.C. 20, 47 S.E.2d 484 (1948). For a discussion of this case, see 27 N.C.L. Rev. 274.

**Warning Should Be Given Pedestrians.**

—An instruction that the violation of statutes regulating the operation of motor vehicles and the conduct of pedestrians on the highway would constitute negligence per se and would be actionable if the proximate cause of injury, is held without error when it appears that the instruction was applied solely to § 20-146 and this section prescribing that vehicles should be operated on the right-hand side of the highway and that warning should be given pedestrians, there being no reference in the charge to a violation of speed restrictions which § 20-141 makes merely prima facie evidence that the speed is unlawful. *Williams v. Woodward*, 218 N.C. 305, 10 S.E.2d 913 (1940).

While ordinarily a motorist is not required to anticipate that a pedestrian will leave a place of safety and get in a line of travel, when the circumstances are such that it should appear to the motorist that a pedestrian is oblivious of his approach, or when he may reasonably anticipate the pedestrian will come into his way, it is his duty to give warning by sounding his horn. *Williams v. Henderson*, 230 N.C. 707, 55 S.E.2d 462 (1949).

A workman crossing a highway in an area marked by signs reading "Men Working" is in a lawful place where he has a right to be, and when apparently oblivious of danger, he is entitled to a signal of approach as much as, if not more than, an ordinary pedestrian in the highway. *Kellogg v. Thomas*, 244 N.C. 722, 94 S.E.2d 903 (1956).

**Duty of Motorist to Child.**—This section imposes upon a driver the legal duty to exercise proper precaution to avoid in-

jury to a child if by the exercise of reasonable care he can and should observe the child upon the street. *Washington v. Davis*, 249 N.C. 65, 105 S.E.2d 202 (1958).

In a prosecution of a motorist for manslaughter in the deaths of two small boys who were struck by defendant's car as defendant was attempting to pass another vehicle traveling in the same direction, evidence that the children were walking on the hard surface when they were struck and that the preceding car speeded up as defendant attempted to pass it, requires the court to instruct the jury upon the conduct of the children in walking on the hard surface and the conduct of the other driver in increasing his speed as bearing upon the question of whether defendant's negligence was a proximate cause of the deaths. *State v. Harrington*, 260 N.C. 663, 133 S.E.2d 452 (1963).

**Duty Where Pedestrian Oblivious to Danger.**—Where a pedestrian elects not to cross an intersection at a point where he has the right-of-way, but at a point where the motorist has the right-of-way, the mere fact that the pedestrian is oblivious to danger does not impose a duty on the motorist to yield the right-of-way; that duty arises when, and only when, the motorist sees, or in the exercise of reasonable care should see, that the pedestrian is not aware of the approaching danger and for that reason will continue to expose himself to peril. *Jenkins v. Thomas*, 260 N.C. 768, 133 S.E.2d 694 (1963).

**Subsection (e) States the Common Law.**—Both the common law and subsection (e) of this section provide that notwithstanding the provisions of subsection (d) "every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway." *Lewis v. Watson*, 229 N.C. 20, 47 S.E.2d 484 (1948).

Independent of statute, it is the duty of the motorist at common law to exercise due care to avoid colliding with a pedestrian. *Gamble v. Sears*, 252 N.C. 706, 114 S.E.2d 677 (1960).

Subsection (e) of this section states the common-law rule of negligence. *Gathings v. Sehorn*, 255 N.C. 503, 121 S.E.2d 873 (1961).

**Instruction as to Crossing between Intersections Held Error.**—Where all the evidence tended to show that the injured pedestrian had crossed the street in the middle of a block between intersections at which traffic control signals were in operation, and there was no evidence that there was a marked crosswalk at the place, an instruction to the effect that the



pedestrian had a right to cross in the middle of the block and that motorists were under duty to do what was necessary for her protection, constituted prejudicial error. *State v. Call*, 236 N.C. 333, 72 S.E.2d 752 (1952).

**Instructions as to Walking on Traveled Portion of Highway.**—Where the evidence is conflicting as to whether plaintiff-pedestrian was walking on her left-hand or her right-hand side of the highway, the court should charge the jury on the various aspects of the evidence to the effect that if she was walking on her left-hand side of the highway it was her duty to yield the right-of-way to vehicles upon the roadway, and that if she was walking on her right-hand side it was in violation of the statute, subsections (a) and (d) of this section, and an instruction that the duty of a pedestrian to yield the right-of-way applies only to traffic approaching from the front when he is walking on his left side of the highway, must be held for error. *Spencer v. McDowell Motor Co.*, 236 N.C. 239, 72 S.E.2d 598 (1952).

**Necessity for Instruction.** — The evidence disclosed that intestate was pushing a handcart on the right side of the highway, and that he was struck from the rear by defendant's vehicle traveling in the same direction. Plaintiff contended that the handcart was a vehicle and that § 20-146 and § 20-149 applied. Defendant contended that intestate was a pedestrian and was required by subsection (d) of this section to push the handcart along the extreme left-hand side of the highway. Held: An instruction failing to define intestate's status and explain the law arising upon the evidence fails to meet the requirements of § 1-180. *Lewis v. Watson*, 229 N.C. 20, 47 S.E.2d 484 (1948).

**§ 20-174.1. Sitting or lying upon highways or streets prohibited.**—(a) No person shall wilfully stand, sit, or lie upon the highway or street in such a manner as to impede the regular flow of traffic.

(b) Any person convicted of violating this section shall be punished by fine or imprisonment, or both in the discretion of the court. (1965, c. 137.)

**§ 20-175. Pedestrians soliciting rides, employment, business or funds upon highways or streets.**—(a) No person shall stand in any portion of the State highways, except upon the shoulders thereof, for the purpose of soliciting a ride from the driver of any motor vehicle.

(b) No person shall stand or loiter in the main traveled portion, including the shoulders and median, of any State highway or street, excluding sidewalks, or stop any motor vehicle for the purpose of soliciting employment, business or contributions from the driver or occupant of any motor vehicle that impedes the normal movement of traffic on the public highways or streets: Provided that the provisions of this subsection shall not apply to licensees, employees or contrac-

**Failure to Charge Statute.**—Where the jury found that defendant was negligent, failure to charge specifically on this statute would not be prejudicial to plaintiff. *Gathings v. Sehorn*, 255 N.C. 503, 121 S.E.2d 873 (1961).

**Evidence Sufficient to Show Noncompliance with Subsection (e).**—See *Register v. Gibbs*, 233 N.C. 456, 64 S.E.2d 280 (1951).

**Evidence Disclosing Contributory Negligence of Pedestrian.** — See *Barbee v. Perry*, 246 N.C. 538, 98 S.E.2d 794 (1957).

**Evidence Warranting Nonsuit.** — Evidence disclosing that plaintiff-pedestrian, instead of crossing at an intersection where he had the right-of-way, elected to cross some 100 feet south of the intersection, and that he was struck by defendant motorist who was traveling, with his lights on, some 25 miles per hour in a 35 mile per hour zone, was held to warrant nonsuit in the absence of evidence not only that plaintiff was oblivious to the danger but that defendant saw, or in the exercise of reasonable care should have seen, that plaintiff was not aware of the approaching danger. *Jenkins v. Thomas*, 260 N.C. 768, 133 S.E.2d 694 (1963).

**Applied in** *Sparks v. Willis*, 228 N.C. 25, 44 S.E.2d 343 (1947)(subsection (e)); *Combs v. United States*, 122 F. Supp. 280 (E.D.N.C. 1954) (as to subsection (e)); *Holland v. Malpass*, 255 N.C. 395, 121 S.E.2d 576 (1961) (as to subsection (a)); *Nix v. Earley*, 263 N.C. 795, 140 S.E.2d 402 (1965).

**Cited in** *Metcalf v. Foister*, 232 N.C. 355, 61 S.E.2d 77 (1950); *Keaton v. Blue Bird Taxi Co.*, 241 N.C. 589, 86 S.E.2d 93 (1955); *Jenks v. Morrison*, 258 N.C. 96, 127 S.E.2d 895 (1962).

tors of the State Highway Commission or of any municipality engaged in construction or maintenance or in making traffic or engineering surveys.

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned for not more than thirty (30) days. (1937, c. 407, s. 136; 1965, c. 673.)

**Editor's Note.**—The 1965 amendment rewrote this section.

#### Part 11A. Blind Pedestrians—White Canes or Guide Dogs.

**§ 20-175.1. Public use of white canes by other than blind persons prohibited.**—It shall be unlawful for any person, except one who is wholly or partially blind, to carry or use on any street or highway, or in any other public place, a cane or walking stick which is white in color or white tipped with red. (1949, c. 324, s. 1.)

**§ 20-175.2. Right-of-way at crossings, intersections and traffic control signal points; white cane or guide dog to serve as signal for the blind.**—At any street, road or highway crossing or intersection, where the movement of traffic is not regulated by a traffic officer or by traffic control signals, any blind or partially blind pedestrian shall be entitled to the right-of-way at such crossing or intersection, if such blind or partially blind pedestrian shall extend before him at arm's length a cane white in color or white tipped with red, or if such person is accompanied by a guide dog. Upon receiving such a signal, all vehicles at or approaching such intersection or crossing shall come to a full stop, leaving a clear lane through which such pedestrian may pass, and such vehicle shall remain stationary until such blind or partially blind pedestrian has completed the passage of such crossing or intersection. At any street, road or highway crossing or intersection, where the movement of traffic is regulated by traffic control signals, blind or partially blind pedestrians shall be entitled to the right-of-way if such person having such cane or accompanied by a guide dog shall be partly across such crossing or intersection at the time the traffic control signals change, and all vehicles shall stop and remain stationary until such pedestrian has completed passage across the intersection or crossing. (1949, c. 324, s. 2.)

**§ 20-175.3. Rights and privileges of blind persons without white cane or guide dog.**—Nothing contained in this part shall be construed to deprive any blind or partially blind person not carrying a cane white in color or white tipped with red, or being accompanied by a guide dog, of any of the rights and privileges conferred by law upon pedestrians crossing streets and highways, nor shall the failure of such blind or partially blind person to carry a cane white in color or white tipped with red, or to be accompanied by a guide dog, upon the streets, roads, highways or sidewalks of this State, be held to constitute or be evidence of contributory negligence by virtue of this part. (1949, c. 324, s. 3.)

**§ 20-175.4. Violations made misdemeanor.**—Any person violating any provision of this part shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding fifty dollars (\$50.00) or imprisoned not exceeding thirty days, or both. (1949, c. 324, s. 4.)

#### Part 12. Penalties.

**§ 20-176. Penalty for misdemeanor.**—(a) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this article unless such violation is by this article or other law of this State declared to be a felony.

(b) Unless another penalty is in this article or by the laws of this State provided, every person convicted of a misdemeanor for the violation of any provision of this article shall be punished by a fine of not more than one hundred dollars (\$100.00) or by imprisonment in the county or municipal jail for not more than sixty days, or by both such fine and imprisonment: Provided, that upon conviction for the following offenses—operating motor vehicles without displaying registration number plates issued therefor; permitting or making any unlawful use of registration number plates, or permitting the use of registration by a person not entitled thereto, and violation of §§ 20-116, 20-117, 20-122, 20-123, 20-124, 20-125, 20-126, 20-127, 20-128, 20-129, 20-130, 20-131, 20-132, 20-133, 20-134, 20-142, 20-143, 20-144, 20-146, 20-147, 20-148, 20-150, 20-151, 20-152, 20-153, 20-154, 20-155, 20-156, 20-157, 20-159, 20-160, 20-161, 20-162, 20-163, 20-165—the punishment therefor shall be a fine not to exceed fifty dollars (\$50.00), or imprisonment not to exceed thirty days for each offense. (1937, c. 407, s. 137; 1951, c. 1013, s. 7; 1957, c. 1255.)

**Editor's Note.** — In addition to being liable to punishment under these statutes, it is possible for a person to be so negligent in the violation in disregarding the rights of others as to be guilty of other crimes at the same time. For example, although it is a misdemeanor to violate the statute regulating the law of the road as to speed under the Motor Vehicle Law, one may also be guilty of murder, manslaughter or assault and battery if he is so reckless in the violation that he runs down and kills or injures another, if the elements essential to constitute such crimes are present in the violation. See *State v. McIver*, 175 N.C. 761, 94 S.E. 682 (1917); *State v. Gush*, 177 N.C. 595, 99 S.E. 337 (1919). And evidence of violation of this chapter is admissible upon such trials. *State v. Suddeth*, 184 N.C. 753, 114 S.E. 828 (1922).

**Driving Without Lights.** — Subsection (b) prescribes punishment for driving a motor vehicle without lights during the period from a half hour after sunset to a half hour before sunrise in violation of § 20-129. *State v. Eason*, 242 N.C. 59, 86 S.E.2d 774 (1955).

Operating a motor vehicle on a public highway at night and without lights is a violation of § 20-129. Such violation is a misdemeanor under this section, and is negligence per se. *Williamson v. Varner*, 252 N.C. 446, 114 S.E.2d 92 (1960).

**The violation of § 20-162 by parking**

within 25 feet from the intersection of curb lines at an intersection of highways within a municipality is a misdemeanor, notwithstanding that the prima facie rule of evidence created by § 20-162.1 is invoked. *State v. Rumpfelt*, 241 N.C. 375, 85 S.E.2d 398 (1955).

**Strict Construction of Penal Provisions.** — Inasmuch as this article contains provisions of a highly penal nature, and, although it is within the police power, the courts will not, by construction, extend its penal provisions unless the case comes within the letter of the law, and within its meaning and palpable design. *Security Fin. Co. v. Hendry*, 189 N.C. 549, 127 S.E. 629 (1925); *Carolina Discount Corp. v. Landis Motor Co.*, 190 N.C. 157, 129 S.E. 414 (1925). [All of the cases cited above were decided under the corresponding provisions of the former law.]

**Applied in** *State v. Daughtry*, 236 N.C. 316, 72 S.E.2d 658 (1952).

**Quoted in** *State v. Wooten*, 228 N.C. 628, 46 S.E.2d 868 (1948).

**Cited in** *State v. Mickle*, 194 N.C. 808, 140 S.E. 150 (1927); *Lancaster v. B. & H. Coach Line*, 198 N.C. 107, 150 S.E. 716 (1929); *Hinson v. Dawson*, 241 N.C. 714, 86 S.E.2d 585 (1955); *State v. Baucom*, 244 N.C. 61, 92 S.E.2d 426 (1956); *McEwen Funeral Serv., Inc. v. Charlotte City Coach Lines, Inc.*, 248 N.C. 146, 102 S.E.2d 816 (1958).

**§ 20-177. Penalty for felony.**—Any person who shall be convicted of a violation of any of the provisions of this article herein or by the laws of this State declared to constitute a felony shall, unless a different penalty is prescribed herein or by the laws of this State, be punished by imprisonment in the State prison for a term not less than one year nor more than five years, or by a fine of not less than five hundred dollars nor more than five thousand dollars, or by both fine and imprisonment. (1937, c. 407, s. 138.)



**§ 20-178. Penalty for bad check.**—When any person, firm, or corporation shall tender to the Department any uncertified check for payment of any tax, fee or other obligation due by him under the provisions of this article, and the bank upon which such check shall be drawn, shall refuse to pay it on account of insufficient funds of the drawer on deposit in such bank, and such check shall be returned to the Department, an additional tax shall be imposed by the Department upon such person, firm or corporation, which additional tax shall be equal to ten per cent (10%) of the tax or fee in payment of which such check was tendered: Provided, that in no case shall the additional tax be less than one dollar (\$1.00); provided, further, that no additional tax shall be imposed if, at the time such check was presented for payment, the drawer had on deposit in any bank of this State funds sufficient to pay such check and by inadvertence failed to draw the check upon such bank, or upon the proper account therein. The additional tax imposed by this section shall not be waived or diminished by the Department. (1937, c. 407, s. 139; 1953, c. 1144.)

**§ 20-179. Penalty for driving while under the influence of intoxicating liquor or narcotic drugs.**—Every person who is convicted of violating § 20-138, relating to habitual users of narcotic drugs or driving while under the influence of intoxicating liquor or narcotic drugs, shall, for the first offense, be punished by a fine of not less than one hundred dollars (\$100.00) or imprisonment for not less than thirty (30) days, or by both such fine and imprisonment, in the discretion of the court. For a second conviction of the same offense, the defendant shall be punished by a fine of not less than two hundred dollars (\$200.00) or imprisonment for not less than six months, or by both such fine and imprisonment, in the discretion of the court. For a third or subsequent conviction of the same offense, the defendant shall be punished by a fine of not less than five hundred dollars (\$500.00) or by both such fine and imprisonment in the discretion of the court. (1937, c. 407, s. 140; 1947, c. 1067, s. 18.)

**Cross Reference.** — As to mandatory revocation of license for driving under influence of liquor or drugs, see § 20-17, subdivision (2). As to operation of vehicles under influence of intoxicating liquor or narcotic drugs, see § 20-138 and note thereto.

**Section Relates Only to Punishment.**—This section, with respect to second, third, and subsequent offenses, relates only to punishment. *State v. White*, 246 N.C. 587, 99 S.E.2d 772 (1957).

**Revocation of License Not Part of Punishment Fixed by Court.**—See G.S. 20-17 and note.

**Suspension of Sentence on Condition Defendant Not Operate Motor Vehicle during Period of Suspension.**—Upon defendant's conviction of operating a motor vehicle while under the influence of intoxicating beverage, the court may not suspend judgment upon condition that the defendant not operate a motor vehicle upon the public roads during the period of suspension unless defendant consents thereto, expressly or by implication. *State v. Cole*, 241 N.C. 576, 86 S.E.2d 203 (1955).

**Procedure in Prosecution for Subsequent Offense.**—No more evidence is re-

quired to convict a defendant for "drunk driving" pursuant to the provisions of this section for a second, third, or subsequent offense than is required for a conviction for a first offense, the only difference being that the State in such cases is required to allege and prove the second, third, or subsequent offenses before it is entitled to subject the accused to the higher penalty. Furthermore, in such cases, the defendant is entitled to know whether or not the State is seeking to exact a higher penalty because of a previous conviction or convictions. *State v. White*, 246 N.C. 587, 99 S.E.2d 772 (1957).

**Allegation of Prior Conviction.** — To make a person subject to the infliction of the heavier punishment to be imposed by the court for a second offense of driving while under the influence of intoxicating liquor or narcotic drugs, pursuant to this section, it is necessary that a prior conviction be alleged in the indictment or warrant for the second offense. *Harrell v. Scheidt*, 243 N.C. 735, 92 S.E.2d 182 (1956).

**Effect of Allegation in Warrant.** — Where the violation charged in the original warrant in the recorder's court alleged

such violation as being a second offense, and the jurisdiction of the superior court was derivative, the superior court had no power to impose a penalty greater than that provided for a second offense, although the indictment in the superior court charged the violation as a third offense. *State v. White*, 246 N.C. 587, 99 S.E.2d 772 (1957).

**Question of Former Conviction Should Be Submitted to Jury.**—Where there is allegation and evidence that defendant had been adjudged guilty of violating § 20-138 on a prior occasion, but this feature was in no way submitted to or passed on by the jury, a verdict of guilty cannot be regarded as a conviction of a second offense within the meaning of this section. Whether there was a former conviction or not was for the jury, not for the court. *State v. Cole*, 241 N.C. 576, 86 S.E.2d 203 (1955).

A plea of *nolo contendere* in a prior case is not the equivalent of a plea of guilty as a basis for the pronouncement of judgment under this section. *State v. Stone*, 245 N.C. 42, 95 S.E.2d 77 (1956).

Where an indictment for driving a motor vehicle while under the influence of intoxicating liquor charges that defendant had theretofore been twice convicted for like offenses, but the proof discloses that defendant had entered a plea of *nolo contendere* in one of the prior instances, the court should not submit such instance to the jury, and the court's action in admitting evidence thereof must be held prejudicial. *State v. Stone*, 245 N.C. 42, 95 S.E.2d 77 (1956).

If the State fails in its proof as to one or more of the alleged prior convictions, this fact does not defeat the entire prosecution and require a verdict of not guilty. Rather, the court before submitting the case will eliminate the allegations in the warrant or indictment of which there is no competent evidence; and the jury, in

returning their verdict, will eliminate the allegations which are not established by the evidence beyond a reasonable doubt. In short, the verdict should spell out, first, whether the jury find the defendant guilty of the violation of § 20-138 charged in the warrant or indictment, and if so, whether they further find that he was convicted of one or more of the alleged prior violations thereof. *State v. Stone*, 245 N.C. 42, 95 S.E.2d 77 (1956).

**Two Years' Imprisonment for First Offense Not Cruel or Unusual Punishment.**

—This section fixes no maximum period of imprisonment as punishment for the first offense of a violation of § 20-138, and it is well settled law in this jurisdiction that when no maximum time is fixed by the statute an imprisonment for two years will not be held cruel or unusual punishment, as prohibited by N.C. Const., Art. I, § 14. *State v. Lee*, 247 N.C. 230, 100 S.E.2d 372 (1957).

**Sentence Not Excessive.**—A sentence to the county jail for a term of six months, and to be assigned to work on the public roads, upon defendant's plea of *nolo contendere* to a warrant charging him with the operation of an automobile upon the public highways while under the influence of intoxicating liquor, is not excessive. *State v. Parker*, 220 N.C. 416, 17 S.E. 475 (1941).

Applied in *State v. Blankenship*, 229 N.C. 589, 50 S.E.2d 724 (1948); *State v. Nall*, 239 N.C. 60, 79 S.E.2d 354 (1953); *State v. Broadway*, 256 N.C. 608, 124 S.E.2d 568 (1962); *State v. Morgan*, 263 N.C. 400, 139 S.E.2d 708 (1965).

Stated in *Fox v. Scheidt*, 241 N.C. 31, 84 S.E.2d 259 (1954); *State v. Green*, 251 N.C. 141, 110 S.E.2d 805 (1959).

Cited in *State v. Ball*, 255 N.C. 351, 121 S.E.2d 604 (1961); *State v. Thompson*, 257 N.C. 452, 126 S.E.2d 58 (1962); *Brewer v. Garner*, 264 N.C. 384, 141 S.E.2d 806 (1965).

**§ 20-180. Penalty for speeding.**—Every person convicted of violating G.S. 20-141 shall be guilty of a misdemeanor, and shall be punished as prescribed in G.S. 20-176 (b), except that any person convicted of violating G.S. 20-141 by operating a motor vehicle on a public street or highway in excess of eighty (80) miles per hour shall be punished by a fine of not less than fifty dollars (\$50.00), or imprisonment of not more than two years, or by both such fine and imprisonment, in the discretion of the court. (1937, c. 407, s. 141; 1947, c. 1067, s. 19; 1951, c. 182, s. 2; 1957, c. 1368, s. 2½; 1959, c. 913.)

**Cross Reference.**—As to revocation of license for two convictions on reckless driving charges, see § 20-17, subdivision (6).

**Penalty Not Excessive.**—Upon conviction of reckless driving, sentence of defendant to six months in the county jail to be assigned to work the roads under the direction of the State Highway Commission is within the limitations prescribed by

this section and therefore cannot be held excessive. *State v. Wilson*, 218 N.C. 769, 12 S.E.2d 654 (1941).

**Applied** in *State v. Blankenship*, 229 N.C. 589, 50 S.E.2d 724 (1948).

**Stated** in *State v. Sumner*, 232 N.C. 386, 61 S.E.2d 84 (1950).

**Cited** in *State v. Cody*, 224 N.C. 470, 31 S.E.2d 445 (1944).

**§ 20-181. Penalty for failure to dim, etc., beams of head lamps.**—Any person operating a motor vehicle on the highways of this State, who shall fail to shift, depress, deflect, tilt or dim the beams of the head lamps thereon whenever another vehicle is met on such highways or when following another vehicle at a distance of less than 200 feet, except when engaged in the act of overtaking and passing shall, upon conviction thereof, be fined not more than ten (\$10.00) dollars or imprisoned for not more than ten (10) days. (1939, c. 351, s. 3; 1955, c. 913, s. 1.)

**Cross Reference.**—As to conviction not being ground for revocation of operator's or chauffeur's license, see § 20-18.

**Cars are required to dim or slant their headlights in passing.** *Cummins v. Southern Fruit Co.*, 225 N.C. 625, 36 S.E.2d 11 (1945).

**Right to Assume That Approaching Driver Will Dim Lights.**—A motorist may assume that whenever he meets another motor vehicle traveling in the opposite direction, its driver will seasonably

dim its headlights and not persist in projecting its glaring light into his eyes. *Chaffin v. Brame*, 233 N.C. 377, 64 S.E.2d 276 (1951); *United States v. First-Citizens Bank & Trust Co.*, 208 F.2d 280 (4th Cir.), affirming *Rosenblatt v. United States*, 112 F. Supp. 114 (E.D.N.C. 1953).

**Applied** in *Keener v. Beal*, 246 N.C. 247, 98 S.E.2d 19 (1957); *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

**§ 20-182. Penalty for failure to stop in event of accident involving injury or death to a person.**—Every person convicted of wilfully violating § 20-166, relative to the duties to stop or render aid or give the information required in the event of accidents, except as otherwise provided, involving injury or death to a person, shall be punished by imprisonment for not less than one nor more than five years, or in the State prison for not less than one nor more than five years, or by fine of not less than five hundred dollars or by both such fine and imprisonment. The Commissioner shall revoke the operator's or chauffeur's license of the person so convicted. In no case shall the court have power to suspend judgment upon payment of costs. (1937, c. 407, s. 142; 1955, c. 913, s. 8.)

**Cross Reference.**—As to mandatory revocation of license in event of failure to stop and render aid in case of accident, see § 20-17, subdivision (4).

**Instruction.**—The defendant was entitled to have the trial judge instruct the jury that the burden was on the State to establish beyond a reasonable doubt that the defendant knowingly or intentionally failed to render reasonable assistance to his injured passenger, including the carry-

ing of him to a physician or surgeon for medical or surgical treatment if it was apparent that such treatment was necessary. *State v. Coggin*, 263 N.C. 457, 139 S.E.2d 701 (1965).

**Applied** in *State v. Smith*, 238 N.C. 82, 76 S.E.2d 363 (1953).

**Cited** in *State v. King*, 219 N.C. 667, 14 S.E.2d 803 (1941); *State v. Ray*, 229 N.C. 40, 47 S.E.2d 494 (1948).

**§ 20-183. Duties and powers of law enforcement officers; warning by local officers before stopping another vehicle on highway; warning tickets.**—(a) It shall be the duty of the law enforcement officers of the State and of each county, city, or other municipality to see that the provisions of this article are enforced within their respective jurisdictions, and any such officer shall have the power to arrest on sight or upon warrant any person found violating the provisions of this article. Such officers within their respective jurisdictions shall have the power to stop any motor vehicle upon the highways of the State for the purpose of determining whether the same is being operated in violation of any of



the provisions of this article. Provided, that when any county, city, or other municipal law enforcement officer operating a motor vehicle overtakes another vehicle on the highways of the State, outside of the corporate limits of cities and towns, for the purpose of stopping the same or apprehending the driver thereof, for a violation of any of the provisions of this article, he shall, before stopping such other vehicle, sound a siren or activate a special light, bell, horn, or exhaust whistle approved for law enforcement vehicles under the provisions of G.S. 20-125 (b).

(b) In addition to other duties and powers heretofore existing, all law enforcement officers charged with the duty of enforcing the Motor Vehicle Laws are authorized to issue warning tickets to motorists for conduct constituting a potential hazard to the motoring public which does not amount to a definite, clear-cut, substantial violation of the Motor Vehicle Laws. Each warning ticket issued shall be prenumbered and shall contain information necessary to identify the offender, and shall be signed by the issuing officer. A copy of each warning ticket issued shall be delivered to such offender and a copy thereof forwarded by the issuing officer forthwith to the Driver License Division of the Department of Motor Vehicles but shall not be filed with or in any manner become a part of the offender's driving record. Warning tickets issued as well as the fact of issuance shall be privileged information and available only to authorized personnel of the Department for statistical and analytical purposes. (1937, c. 407, s. 143; 1961, c. 793; 1965, cc. 537, 999.)

**Editor's Note.**—The first 1965 amendment designated the former provisions of this section as subsection (a) and added subsection (b).

The second 1965 amendment rewrote the first sentence in subsection (b).

**Applied** in *State v. Eason*, 242 N.C. 59, 86 S.E.2d 774 (1955).

**Stated** in *State v. Mobley*, 240 N.C. 476, 83 S.E.2d 100 (1954).

**Cited** in *State v. Cole*, 241 N.C. 576, 86 S.E.2d 203 (1955); *Lowe v. Department of Motor Vehicles*, 244 N.C. 353, 93 S.E.2d 448 (1956).

## ARTICLE 3A.

### *Motor Vehicle Law of 1947.*

#### Part 1. Safe Use of Streets and Highways.

§ 20-183.1. **Rights, privileges and duties; declarations of policy.**—Fully cognizant of the fact that preservation of human life is a sacred duty and obligation of the legislative, the judicial, and the executive branches of the government, the General Assembly hereby recognizes the following rights, privileges, and duties, and makes the following declarations of policy:

- (1) Each of the citizens of the State of North Carolina has the right and privilege of using the streets and highways of the State either as a pedestrian or a motorist or both, without needless exposure to accident, injury, or death occasioned by the reckless or otherwise unlawful operation by others of vehicles over or upon said streets and highways;
- (2) The right and privilege of any person to use the streets and highways of the State is, however, subject to the right and privilege of other persons to use said streets and highways in a safe, lawful, sane, and prudent manner;
- (3) In order to secure to law-abiding and prudent pedestrians and motorists the full enjoyment of the right and privilege herein declared to exist, those operators of vehicles who are heedless of the duties and obligations imposed upon them and unmindful of the rights of others shall be barred from the streets and highways of the State;
- (4) To guarantee to motorists and pedestrians the safe use of the streets and highways of the State is the purpose of the General Assembly in enacting this act. (1947, c. 1067, s. 1.)

**Editor's Note.**—The act from which this section was codified inserted §§ 20-183.1 through 20-183.8, repealed §§ 20-13 and 20-36, and amended §§ 20-7, 20-16, 20-17, 20-19, 20-28, 20-141, 20-179, 20-180 and 20-188.

Session Laws 1947, c. 1067, s. 24, provides: "When in any part or section of this act a greater or higher punishment, penalty, or loss of rights or privileges is imposed for a second or subsequent conviction of any offense than is imposed for

a first conviction of such offense, no conviction occurring prior to the effective date of the part or section under which the punishment, penalty, or loss of rights or privileges is to be imposed shall be considered as a prior conviction of such offense in determining whether or not the conviction under any part or section of this act is a second or subsequent conviction of such offense."

## Part 2. Safety Equipment Inspection of Motor Vehicles.

**§ 20-183.2. Safety equipment inspection required; inspection certificate.**—(a) Every motor vehicle registered, or required to be registered, in North Carolina when operated on the highway must display a current approved certificate at such place on the vehicle as may be designated by the Commissioner, indicating that it has been inspected in accordance with the schedule set out in subsection (b) hereof and has been found to comply with the standards for safety equipment prescribed by this chapter. Thereafter, said vehicles shall display a current inspection certificate as required in subsection (c) hereof.

(b) Vehicles shall be inspected and display approval certificate required in subsection (a) above in accordance with and not later than the dates enumerated herein:

- (1) Vehicles whose last numerical digit on 1966 North Carolina license plate is three (3) shall be inspected and approved on or before March 31, 1966;
- (2) Vehicles whose last numerical digit on 1966 North Carolina license plate is four (4) shall be inspected and approved on or before April 30, 1966;
- (3) Vehicles whose last numerical digit on 1966 North Carolina license plate is five (5) shall be inspected and approved on or before May 31, 1966;
- (4) Vehicles whose last numerical digit on 1966 North Carolina license plate is six (6) shall be inspected and approved on or before June 30, 1966;
- (5) Vehicles whose last numerical digit on 1966 North Carolina license plate is seven (7) shall be inspected and approved on or before July 31, 1966;
- (6) Vehicles whose last numerical digit on 1966 North Carolina license plate is eight (8) shall be inspected and approved on or before August 31, 1966;
- (7) Vehicles whose last numerical digit on 1966 North Carolina license plate is nine (9) shall be inspected and approved on or before September 30, 1966;
- (8) Vehicles whose last numerical digit on 1966 North Carolina license plate is zero (0) shall be inspected and approved on or before October 31, 1966;
- (9) Vehicles whose last numerical digit on 1966 North Carolina license plate is one (1) shall be inspected and approved on or before November 30, 1966;
- (10) Vehicles whose last numerical digit on 1966 North Carolina license plate is two (2) shall be inspected and approved on or before December 31, 1966.

(c) Every inspection certificate issued under this part shall be valid for not less than twelve months and shall expire at midnight on the last day of the month designated on said inspection certificate. It shall be unlawful to operate any mo-

tor vehicle on the highway until there is displayed thereon a current inspection certificate, as provided by this part, indicating that the vehicle has been inspected within the previous twelve months and has been found to comply with the standards for safety equipment prescribed by this chapter.

(d) (1) On and after February 16, 1966 all motor vehicle dealers in North Carolina shall, prior to retail sale of any new or used motor vehicle, have such motor vehicle inspected by an approved inspection station and have affixed thereto an approved inspection certificate as required by this part.

(2) Except as provided for in subdivision (1) of this subsection, the purchaser of any new or used motor vehicle required to be inspected under this part, or of a vehicle brought into this State and required to be registered under the provisions of chapter 20 of the General Statutes of North Carolina, or any motor vehicle registered for the year 1966 and for which a registration plate is issued, for that year, on or after February 16, 1966, may operate such vehicle or allow it to be operated on the highways of the State without inspection for not more than ten days.

(e) When a motor vehicle required to be inspected under this part shall, upon inspection, fail to meet the safety requirements of this part, the safety equipment inspection station making such inspection, shall issue an authorized receipt and statement for such vehicle indicating that it has been inspected and shall enumerate the defects found. The owner or operator may have such defects corrected at such place as he or she chooses. The vehicle may be reinspected at the safety equipment inspection station first making the inspection, without additional charge, or the owner or operator may have same inspected at another safety equipment inspection station. (1965, c. 734, s. 1.)

**Editor's Note.**—Former §§ 20-183.2 to 20-183.8, which derived from Session Laws 1949, c. 164, 1947, c. 1067, and related to inspection of motor vehicles, were repealed by Session Laws 1949, c. 164.

**§ 20-183.3. Inspection requirements.** — Before an approval certificate may be issued for a motor vehicle, the vehicle must be inspected by a safety inspection equipment station, and if required by chapter 20 of the General Statutes of North Carolina, must be found to possess in safe operating condition the following articles and equipment:

- (1) Brakes
- (2) Lights
- (3) Horn
- (4) Steering mechanism
- (5) Windshield wiper
- (6) Directional signals.

The inspection requirements herein provided for shall not exceed the standards provided in the current General Statutes for such equipment. (1965, c. 734, s. 1.)

**§ 20-183.4. Licensing of safety equipment inspection stations.** — Every person, firm or agency with employees meeting the following qualifications shall, upon application, be issued a license designating the person, firm or agency as a safety equipment inspection station:

- (1) Be of good character and have a good reputation for honesty.
- (2) Have adequate knowledge of the equipment requirements of the Motor Vehicle Laws of North Carolina.
- (3) Be able to satisfactorily conduct the mechanical inspection required by this part.
- (4) Have adequate facilities as to space and equipment in order to check each of the items of safety equipment listed herein.



- (5) Have a general knowledge of motor vehicles sufficient to recognize a mechanical condition which is not safe.

Any person, firm or agency meeting the above requirements and desiring to be licensed as a motor vehicle inspection station may apply to the Commissioner of Motor Vehicles on forms provided by the Commissioner. The Commissioner shall cause an investigation to be made as to the applicant's qualifications, and if in the opinion of the Commissioner, the applicant fulfills such qualifications, he shall issue a certificate of appointment to such person, firm or agency as a safety equipment inspection station. Such appointment shall be issued without charge and shall be effective until cancelled by request of the inspection station or until suspended or revoked for cause following a hearing by the Commissioner. Any applicant who is refused a license, or any inspection station whose license has been suspended or revoked, may file a petition in the Superior Court of Wake County or in the superior court in his county of residence for a review of the action of the Commissioner. When such a petition is filed in the superior court twenty days' notice shall be given to the Commissioner of Motor Vehicles. The court may then hear evidence from the applicant and the Commissioner concerning the qualifications of the applicant, and the court may make such findings as the evidence shall warrant, and if found qualified shall order that the action of the Commissioner refusing, suspending or revoking the license be rescinded.

The Commissioner may designate the State or any political subdivision thereof or any person, firm or corporation as self inspectors for the sole purpose of inspecting vehicles owned or operated by such agencies, persons, firms, or corporations so designated. (1965, c. 734, s. 1.)

**§ 20-183.5. Supervision of safety equipment inspection stations.—**

When a person, firm or agency is designated as a safety equipment inspection station the Commissioner of Motor Vehicles shall record such appointment and shall cause periodic checks to be made to determine that inspections are being conducted in accordance with this part, and shall cause investigations to be made of bona fide complaints received regarding any such inspection station. (1965, c. 734, s. 1.)

**§ 20-183.6. Commissioner of Motor Vehicles to establish procedures; unlawful possession, etc., of certificates.—**The Commissioner of Motor Vehicles shall establish procedures for the control, distribution, sale, refund, and display of certificates and for the accounting for proceeds of their sale, consistent with this article. It shall be unlawful knowingly to possess, affix, transfer, remove, imitate or reproduce an inspection certificate, except by direction of the Commissioner of Motor Vehicles under the terms of this article. (1965, c. 734, s. 1.)

**§ 20-183.7. Fees to be charged by safety equipment inspection station.—**

Every inspection station, except self inspectors as designated herein, shall charge a fee of one dollar and fifty cents (\$1.50) for inspecting a motor vehicle to determine compliance with this article and shall give the operator a receipt indicating the articles and equipment approved and disapproved; provided, that inspection stations approved by the Commissioner, and operated under rules, regulations and supervision of any governmental agency, when inspecting vehicles required to be inspected by such agencies' rules and regulations and by the provisions of this part, may, upon approval by such inspection station and the payment of a fee of twenty-five cents (25¢), attach to the vehicle inspected a North Carolina inspection certificate as required by this part. When the receipt is presented to the inspection station which issued it, at any time within ninety days, that inspection station shall reinspect the motor vehicle free of additional charge until approved. When said vehicle is approved, and upon payment to the inspection station of the fee, the inspection station shall affix a valid inspection certificate to said motor vehicle, and said inspection station shall maintain a record of the motor vehicles

inspected which shall be available for eighteen months. The Department of Motor Vehicles shall receive twenty-five cents (25¢) for each inspection certificate and these proceeds shall be placed in a fund designated the "Motor Vehicle Safety Equipment Inspection Fund," to be used under the direction and supervision of the Director of the Budget for the administration of this article. (1965, c. 734, s. 1.)

**§ 20-183.8. Commissioner of Motor Vehicles to issue regulations subject to approval of Governor; penalties for violation.**—(a) It is the intent of the article that the provisions herein shall be carried out by the Commissioner of Motor Vehicles for the safety and convenience of the motoring public. The Commissioner shall have authority to promulgate only such regulations as are reasonably necessary for the purpose of carrying out the provisions of this inspection program, but such regulations shall not be effective until the same have been approved by the Governor.

(b) Violation of any provision of this article shall, upon conviction, be punishable by a fine not to exceed fifty dollars (\$50.00) or imprisonment not to exceed thirty days, except that the unauthorized reproduction of an inspection certificate shall be punishable as a forgery under G.S. 14-119. (1965, c. 734, s. 1.)

#### ARTICLE 3B.

##### *Permanent Weighing Stations and Portable Scales.*

**§ 20-183.9. Establishment and maintenance of permanent weighing stations.**—The State Highway Commission is hereby authorized, empowered and directed to establish during the biennium ending June 30, 1953, not less than six nor more than twelve permanent weighing stations equipped to weigh vehicles using the streets and highways of this State to determine whether such vehicles are being operated in accordance with legislative enactments relating to weights of vehicles and their loads. The permanent weighing stations shall be established at such locations on the streets and highways in this State as will enable them to be used most advantageously in determining the weight of vehicles and their loads. Said permanent weighing stations shall be equipped by the State Highway Commission and shall be maintained by said Commission.

There is hereby appropriated to the State Highway Commission out of the State Highway and Public Works Fund the sum of three hundred thousand dollars (\$300,000.00). The funds appropriated by this paragraph shall be used exclusively for the purpose of carrying out the provisions of this section and may be expended at any time during the biennium ending June 30, 1953. (1951, c. 988, s. 1; 1957, c. 65, s. 11.)

**§ 20-183.10. Operation by Department of Motor Vehicles; uniformed personnel with powers of peace officers.**—The permanent weighing stations to be established pursuant to the provisions of this article shall be operated by the Department of Motor Vehicles, and the personnel assigned to the various stations shall wear uniforms to be selected and furnished by the Department of Motor Vehicles. The uniformed officers assigned to the various permanent weighing stations shall have the powers of peace officers in making arrests, serving process, and appearing in court in all matters and things relating to the weight of vehicles and their loads.

There is hereby appropriated to the Department of Motor Vehicles out of the State Highway and Public Works Fund the sum of two hundred fifty thousand dollars (\$250,000.00) for each year of the biennium ending June 30, 1953. The funds appropriated in this paragraph shall be expended exclusively for the operation of the permanent weighing stations established pursuant to this article. (1951, c. 988, s. 2.)

**§ 20-183.11. Refusal of operator to co-operate in weighing vehicle; removal of excess portion of load.**—When a permanent weighing station is established under the provisions of this section, it shall constitute a misdemeanor for the operator of any vehicle to refuse to permit his vehicle to be weighed at such station or to refuse to drive his vehicle upon the scales so that the same may be weighed. Any vehicle and its load found to be above the weight authorized in chapter 20 of the General Statutes shall have immediately removed by the operator such portion of its load as may be necessary to decrease the gross weight of the vehicle to the maximum thereof specified in chapter 20 of the General Statutes: Provided, that the Department may allow any vehicle transporting refrigerated or iced perishable foods for human consumption to proceed without removing all or a portion of its load when the owner or operator has paid the taxes and penalties due because of the overload or has made satisfactory arrangements with the Commissioner of Motor Vehicles to pay said taxes and penalties. The material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of the owner or operator of such vehicle. (1951, c. 988, s. 3.)

**§ 20-183.12. Portable scales.**—In addition to the appropriation contained in § 20-183.9, there is hereby appropriated to the Department of Motor Vehicles out of the State Highway and Public Works Fund the sum of sixty-five thousand dollars (\$65,000.00) for each year of the biennium ending June 30, 1953. The money appropriated in this section shall be used by the Commissioner of Motor Vehicles for the purchase and use of portable scales for weighing vehicles traveling over the streets and highways of this State. (1951, c. 988, s. 4.)

#### ARTICLE 3C.

##### *Vehicle Equipment Safety Compact.*

**§ 20-183.13. Compact enacted into law; form of compact.**—The Vehicle Equipment Safety Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

#### VEHICLE EQUIPMENT SAFETY COMPACT

##### ARTICLE I. Findings and Purposes.

(a) The party states find that:

(1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to:

(1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this Article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.



## ARTICLE II. Definitions.

As used in this compact:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

## ARTICLE III. The Commission.

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the Commission. The Commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the Commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the Commission in such form as the Commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the Commission for expenses actually incurred in attending Commission meetings or while engaged in the business of the Commission.

(b) The commissioners shall be entitled to one vote each on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the Commission are cast in favor thereof. Action of the Commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The Commission may appoint an Executive Director and fix his duties and compensation. Such Executive Director shall serve at the pleasure of the Commission, and together with the treasurer shall be bonded in such amount as the Commission shall determine. The Executive Director also shall serve as secretary. If there be no Executive Director, the Commission shall elect a secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the Civil Service, personnel or other merit system laws of any of the party states, the Executive Director with approval of the Commission, or the Commission if there be no Executive Director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the Commission's functions, and shall fix the duties and compensation of such personnel.

(f) The Commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the Commission shall be eligible for Social Security coverage in respect of old age and survivor's insurance provided that the Commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a government agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The Commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The Commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(i) The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all Commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The Commission annually shall make to the governor and legislature of each party state a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been issued by the Commission. The Commission may make such additional reports as it may deem desirable.

#### ARTICLE IV. Research and Testing.

The Commission shall have power to:

(a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the Commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

#### ARTICLE V. Vehicular Equipment.

(a) In the interest of vehicular and public safety, the Commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the Commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this Article. No less than sixty (60) days after the publication of a report containing the results of such study, the Commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this Article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the Commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the Commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all

rules, regulations and codes issued by the Commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The Commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this Article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any Commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this Article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six (6) months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the Commission pursuant to this Article if such agency specifically finds, after public hearing on due notice, that a variation from the Commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the Commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

#### ARTICLE VI. Finance.

(a) The Commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: One third in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the Commission may employ such source or sources of information as, in its judgment present the most equitable and accurate comparisons among the party states. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article III (h) of this compact, provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under Article III (h) hereof, the Commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the Commission shall be audited



yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the Commission.

(f) Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

#### ARTICLE VII. Conflict of Interest.

(a) The Commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the Commission and contractors with the Commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the Commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a Commission rule or regulation adopted pursuant to this Article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the Commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the Commission subject to cancellation by the Commission.

(b) Nothing contained in this Article shall be deemed to prevent a contractor for the Commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the Commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

#### ARTICLE VIII. Advisory and Technical Committees.

The Commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

#### ARTICLE IX. Entry into Force and Withdrawal.

(a) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

#### ARTICLE X. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. (1963, c. 1167, s. 1.)

§ 20-183.14. **Legislative findings.**—The General Assembly finds that:

- (1) The public safety necessitates the continuous development, modernization and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion.
- (2) The public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation.
- (3) The Department of Motor Vehicles, acting upon recommendations of the Vehicle Equipment Safety Commission and pursuant to the Vehicle Equipment Safety Compact provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this article. (1963, c. 1167, s. 2.)

§ 20-183.15. **Approval of rules and regulations by General Assembly required.**—Pursuant to Article V (e) of the Vehicle Equipment Safety Compact, it is the intention of this State and it is hereby provided that no rule, regulation or code issued by the Vehicle Equipment Safety Commission in accordance with Article V of the compact shall take effect until approved by act of the General Assembly. (1963, c. 1167, s. 3.)

§ 20-183.16. **Compact Commissioner.**—The Commissioner of this State on the Vehicle Equipment Safety Commission shall be the Commissioner of Motor Vehicles or such other officer of the Department as the Commissioner may designate. (1963, c. 1167, s. 4.)

§ 20-183.17. **Cooperation of State agencies authorized.**—Within appropriations available therefor, the departments, agencies and officers of the government of this State may cooperate with and assist the Vehicle Equipment Safety Commission within the scope contemplated by Article III (h) of the compact. The departments, agencies and officers of the government of this State are authorized generally to cooperate with said Commission. (1963, c. 1167, s. 5.)

§ 20-183.18. **Filing of documents.**—Filing of documents as required by Article III (j) of the compact shall be with the Secretary of State. (1963, c. 1167, s. 6.)

§ 20-183.19. **Budget procedure.**—Pursuant to Article VI (a) of the compact, the Vehicle Equipment Safety Commission shall submit its budgets to the Director of the Budget. (1963, c. 1167, s. 7.)

§ 20-183.20. **Inspection of financial records of Commission.**—Pursuant to Article VI (e) of the compact, the State Auditor is hereby empowered and authorized to inspect the accounts of the Vehicle Equipment Safety Commission. (1963, c. 1167, s. 8.)

§ 20-183.21. **“Executive head” defined.**—The term “executive head” as used in Article IX (b) of the compact shall, with reference to this State, mean the Governor. (1963, c. 1167, s. 9.)

#### ARTICLE 4.

##### *State Highway Patrol.*

§ 20-184. **Patrol under supervision of Department of Motor Vehicles.**—The Commissioner of Motor Vehicles, under the direction of the Governor, shall have supervision, direction and control of the State Highway Patrol. The Commissioner shall establish in the Department of Motor Vehicles a Division of Highway Safety and Patrol, prescribe regulations governing said Division, and assign to the Division such duties as he may deem proper. (1935, c. 324, s. 2; 1939, c. 387, s. 1; 1941, c. 36.)

**§ 20-185. Personnel; appointment; salaries.**—(a) The State Highway Patrol shall consist of a commanding officer, whose rank shall be designated by the Governor, and such additional subordinate officers and men as the Commissioner of Motor Vehicles, with the approval of the Governor and Advisory Budget Commission, shall direct. Members of the State Highway Patrol shall be appointed by the Commissioner, with the approval of the Governor, and shall serve at the pleasure of the Governor and Commissioner. The commanding officer, other officers and members of the State Highway Patrol shall be paid such salaries as may be established by the Division of Personnel of the Budget Bureau.

(b) The salary of any officer or member of the State Highway Patrol, established pursuant to subsection (a) of this section shall be paid to him so long as his employment as such officer or member of the Patrol shall continue, notwithstanding his total or partial incapacity to perform any duties to which he may lawfully be assigned by the Commissioner of Motor Vehicles or commanding officer of the State Highway Patrol, if such incapacity be the result of an injury by accident arising out of and in the course of the performance by him of his official duties: Provided, however, that if such incapacity continue for more than one year from its inception, such officer or member of the State Highway Patrol shall during the further continuance of such incapacity be paid one-half of such established salary from the end of the first year of such incapacity to the end of the second year of such incapacity, or until his resumption of his regularly assigned duties, his retirement, resignation, or death, whichever first occurs and thereafter all payments to him pursuant to this subsection shall cease. All payments of salary provided for in this subsection (b) shall be made at the same time and in the same manner as other salaries are paid to members of the State Highway Patrol.

(c) The provisions of subsection (b) of this section shall be in lieu of all compensation provided for the first two years of such incapacity by §§ 97-29 and 97-30 of the General Statutes of North Carolina, but shall be in addition to any other benefits or compensation to which such officer or member of the State Highway Patrol shall be entitled under the provisions of the Workmen's Compensation Act.

(d) The period for which the salary of any officer or member of the State Highway Patrol shall be paid to him, pursuant to subsection (b) of this section, while he is incapacitated as a result of injury by accident arising out of and in the course of the performance of his official duties, shall not be charged against any sick or other leave to which he shall be entitled under any other provision of law.

(e) Any officer or member of the State Highway Patrol, who as a result of an injury by accident arising out of and in the course of the performance by him of his official duties, shall be totally or partially incapacitated to perform any duties to which he may be lawfully assigned, shall report such incapacity to the Commissioner of Motor Vehicles as soon as may be practicable in such manner as the Commissioner shall require. Upon the filing of such report, the Commissioner of Motor Vehicles shall determine the cause of such incapacity, and to what extent the claimant may be assigned to other than his normal duties. The finding of the Commissioner of Motor Vehicles shall determine the right of the claimant to benefits under subsection (b) of this section, unless the claimant, within thirty (30) days after he receives notice thereof, files with the North Carolina Industrial Commission, upon such form as it shall require, a request for a hearing. Upon the filing of such request, the North Carolina Industrial Commission shall proceed to hear the matter in accordance with its regularly established procedure for hearing claims filed under the Workmen's Compensation Act, and shall report its findings to the Commissioner of Motor Vehicles. From the decision of the North Carolina Industrial Commission an appeal shall lie as in



other matters heard and determined by such Commission. Any officer or member of the State Highway Patrol who shall refuse to perform any duties to which he may properly be assigned as the result of the finding of the Commissioner of Motor Vehicles, or of the North Carolina Industrial Commission, shall be entitled to no benefits pursuant to subsection (b) of this section so long as such refusal shall continue.

(f) The benefits provided for members of the State Highway Patrol under the provisions of subsections (b), (c), (d), and (e) of this section shall be granted to the Director and assistant director of the License and Theft Enforcement Division of the Department and to members of the License and Theft Enforcement Division designated by the Commissioner as "inspectors," in the same manner and under the same circumstances and subject to the same limitations as if the Director and assistant director and the inspectors were members of the State Highway Patrol.

(g), (h): Struck out by Session Laws 1961, c. 833, s. 6.2. (1929, c. 218, s. 1; 1931, c. 381; 1935, c. 324, s. 1; 1937, c. 313, s. 1; 1941, c. 36; 1947, c. 461, s. 1; 1953, c. 1195, s. 1; 1955, c. 372; 1957, c. 1394; 1959, cc. 370, 1320; 1961, c. 833, s. 6.2.)

**§ 20-186. Oath of office; bond.**—Each member of the Highway Patrol shall subscribe and file with the Commissioner of Motor Vehicles an oath of office for the faithful performance of his duties, and shall give a bond with good surety payable to the State of North Carolina in a sum not less than one thousand dollars (\$1000.00) and not more than two thousand five hundred dollars (\$2500.00) to be fixed by the Commissioner of Motor Vehicles, conditioned as well for the faithful discharge of his duty as patrolman as for his diligently endeavoring to collect faithfully and pay over all sums of money received. The bond shall be duly approved and filed in the office of the Insurance Commissioner, and copies of the bond certified by the Insurance Commissioner shall be received and read in evidence in all actions and proceedings where the original might be. (1929, c. 218, s. 2; 1937, c. 339, s. 1; 1941, c. 36.)

**Cross Reference.**—See § 128-9.

**§ 20-187. Orders and rules for organization and conduct.** — The Commissioner of Motor Vehicles is authorized and empowered to make all necessary orders, rules and regulations for the organization, assignment, and conduct of the members of the State Highway Patrol. Such orders, rules and regulations shall be subject to the approval of the Governor. (1929, c. 218, ss. 1, 3; 1931, c. 381; 1933, c. 214, ss. 1, 2; 1939, c. 387, s. 2; 1941, c. 36.)

**§ 20-188. Duties of Highway Patrol.**—The State Highway Patrol shall be subject to such orders, rules and regulations as may be adopted by the Commissioner of Motor Vehicles, with the approval of the Governor, and shall regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State. To this end, the members of the Patrol are given the power and authority of peace officers for the service of any warrant or other process issuing from any of the courts of the State having criminal jurisdiction, and are likewise authorized to arrest without warrant any person who, in the presence of said officers, is engaged in the violation of any of the laws of the State regulating travel and the use of vehicles upon the highways, or of laws with respect to the protection of the highways, and they shall have jurisdiction anywhere within the State, irrespective of county lines.

The State Highway Patrol shall have full power and authority to perform such additional duties as peace officers as may from time to time be directed by the Governor, and such officers may at any time and without special authority, either upon their own motion or at the request of any sheriff or local police

authority, arrest persons accused of highway robbery, bank robbery, murder, or other crimes of violence.

The State Highway Patrol shall be required to perform such other and additional duties as may be required of it by the Commissioner of Motor Vehicles in connection with the work of the Department of Motor Vehicles, and such other and additional duties as may be required of it from time to time by the Governor.

Members of the State Highway Patrol, in addition to the duties, power and authority hereinbefore given, shall have the authority throughout the State of North Carolina of any police officer in respect to making arrests for any crimes committed in their presence and shall have authority to make arrests for any crime committed on any highway. (1929, c. 218, s. 4; 1933, c. 214, ss. 1, 2; 1935, c. 324, s. 3; 1939, c. 387, s. 2; 1941, c. 36; 1945, c. 1048; 1947, c. 1067, s. 20.)

**Cross Reference.**—As to duty to refer to State court cases involving vehicles seized or arrests made for unlawful transportation of liquor, see § 18-6.1.

**Power to Make Arrests.**—As to power of highway patrolman to make arrests, see 23 N.C.L. Rev. 338.

Where a highway patrolman is advised by a person that an armed convict had come to her home, made threats, and demanded food, such patrolman is given authority under this section to arrest such convict. *Galloway v. Department of Motor Vehicles*, 231 N.C. 447, 57 S.E.2d 799 (1950).

**Armed robbery is a crime of violence**

within the meaning of this section. *Galloway v. Department of Motor Vehicles*, 231 N.C. 447, 57 S.E.2d 799 (1950).

The word "accused" in this section is used in the generic sense and does not import that the person to be arrested must have been accused of crime by judicial procedure. *Galloway v. Department of Motor Vehicles*, 231 N.C. 447, 57 S.E.2d 799 (1950).

The use of an airplane by highway patrolmen to locate a person sought to be arrested by them is not a departure from the terms of their employment. *Galloway v. Department of Motor Vehicles*, 231 N.C. 447, 57 S.E.2d 799 (1950).

**§ 20-189. Patrolmen assigned to Governor's office.**—The Commissioner of Motor Vehicles, at the request of the Governor, shall assign and attach two members of the State Highway Patrol to the office of the Governor, there to be assigned such duties and perform such services as the Governor may direct. The salary of the State highway patrolmen so assigned to the office of the Governor shall be paid from appropriations made to the office of the Governor and shall be fixed in an amount to be determined by the Governor and the Advisory Budget Commission. (1941, cc. 23, 36; 1965, c. 1159.)

**Editor's Note.** — The 1965 amendment substituted "two members" for "one member" in the first sentence and "patrolmen" for "patrolman" in the last sentence.

**§ 20-190. Uniforms; motor vehicles and arms; expense incurred; color of vehicle.**—The Department of Motor Vehicles shall adopt some distinguishing uniform for the members of said State Highway Patrol, and furnish each member of the Patrol with an adequate number of said uniforms and each member of said Patrol force when on duty shall be dressed in said uniform. The Department of Motor Vehicles shall likewise furnish each member of the Patrol with a suitable motor vehicle, and necessary arms, and provide for all reasonable expense incurred by said Patrol while on duty, provided, that not less than seventy-nine per cent (79%) of the number of motor vehicles operated on the highways of the State by members of the State Highway Patrol shall be painted a uniform color of black and silver. (1929, c. 218, s. 5; 1941, c. 36; 1955, c. 1132, ss. 1, 1¼, 1¾; 1957, c. 478, s. 1; c. 673, s. 1; 1961, c. 342.)

**§ 20-190.1. Patrol vehicles to have sirens; sounding siren.**—Every motor vehicle operated on the highways of the State by officers and members of the State Highway Patrol shall be equipped with a siren. Whenever any such officer or member operating any unmarked car shall overtake another vehicle on the highway after sunset of any day and before sunrise for the purpose of

stopping the same or apprehending the driver thereof, he shall sound said siren before stopping such other vehicle. (1957, c. 478, s. 1½.)

**§ 20-190.2. Signs showing highways patrolled by unmarked vehicles.**—The North Carolina State Highway Commission shall erect or cause to be erected signs at all points where paved highways enter this State from adjacent states stating that the highways are patrolled by unmarked police vehicles. (1957 c. 673, s. 2.)

**Editor's Note.** — By virtue of Session "State Highway and Public Works Com-  
Laws 1957, c. 65, s. 11, "State Highway mission."  
Commission" has been substituted for

**§ 20-191. Establishment of district headquarters.**—The Department of Motor Vehicles shall supply at its various district offices, or at some other point within the district if it shall be deemed advisable, suitable district headquarters, and the necessary clerical assistance for the commanding officer of the force at his headquarters in Raleigh and at the several district headquarters. (1929, c. 218, s. 6; 1937, c. 313, s. 1; 1941, c. 36; 1947, c. 461, s. 2.)

**§ 20-192. Shifting of patrolmen from one district to another.**—The commanding officer of the State Highway Patrol under such rules and regulations as the Department of Motor Vehicles may prescribe shall have authority from time to time to shift the forces from one district to another, or to consolidate more than one district force at any point for special purposes. Whenever a member of the State Highway Patrol is transferred from one point to another for the convenience of the State or otherwise than upon the request of the patrolman, the Department shall be responsible for transporting the household goods, furniture and personal apparel of the patrolman and members of his household. (1929, c. 218, s. 7; 1937, c. 313, s. 1; 1941, c. 36; 1947, c. 461, s. 3; 1951, c. 285.)

**§ 20-193. Fees for service of process by patrolmen to revert to county.**—All fees for arrests or service of process that may be taxed in the bill of costs for the various courts of the State on account of the official acts of the members of the State Highway Patrol shall be remitted to the general fund in the county in which the said cost is taxed. (1929, c. 218, s. 8.)

**§ 20-194. Expense of administration.**—All expenses incurred in carrying out the provisions of this article shall be paid out of the maintenance funds of the State Highway Commission. (1929, c. 218, s. 9; 1941, c. 36; 1957, c. 65, s. 11.)

**§ 20-195. Co-operation between Patrol and local officers.** — The Commissioner of Motor Vehicles with the approval of the Governor, through the Division of Highway Safety and Patrol, shall encourage the co-operation between the Highway Patrol and the several municipal and county peace officers of the State for the enforcement of all traffic laws and the proper administration of the Uniform Drivers' License Law, and arrangements for compensation of special services rendered by such local officers out of the funds allotted to the Division of Highway Safety and Patrol may be made, subject to the approval of the Director of the Budget. (1935, c. 324, s. 5; 1939, c. 387, s. 3; 1941, c. 36.)

**§ 20-196. State-wide radio system authorized; use of telephone lines in emergencies.**—The Commissioner of Motor Vehicles, through the Division of Highway Safety and Patrol is hereby authorized and directed to set up and maintain a state-wide radio system, with adequate broadcasting stations so situate as to make the service available to all parts of the State for the purpose of maintaining radio contact with the members of the State Highway Patrol and other officers of the State, to the end that the traffic laws upon the



highways may be more adequately enforced and that the criminal use of the highways may be prevented.

If the Director of the Budget shall find that the appropriation provided for the Department is not adequate to take care of the entire cost of the radio service herein provided for, after providing for the administration of other provisions of this law, the State Highway Commission, upon the order of the Director of the Budget approved by the Advisory Budget Commission, shall make available such additional sum as the said Budget Commission may find to be necessary to make the installation and operation of such radio service possible; and the sum so provided by the State Highway Commission shall constitute a valid charge against the appropriation item of betterments for State and county roads.

The Commissioner of Motor Vehicles is likewise authorized and empowered to arrange with the various telephone companies of the State for the use of their lines for emergency calls by the members of the State Highway Patrol, if it shall be found practicable to arrange apparatus for temporary contact with said telephone circuits along the highways of the State.

In order to make this service more generally useful, the various boards of county commissioners and the governing boards of the various cities and towns are hereby authorized and empowered to provide radio receiving sets in the offices and vehicles of their various officers, and such expenditures are declared to be a legal expenditure of any funds that may be available for police protection. (1935, c. 324, s. 6; 1941, c. 36; 1957, c. 65, s. 11.)

**§ 20-196.1. Use of airplanes to discover persons violating certain motor vehicle laws.**—The State Highway Patrol is hereby prohibited from using airplanes to discover violations of part 10 of article 3 of chapter 20 of the General Statutes relating to operation of motor vehicles and rules of the road. This section shall not prohibit the use of airplanes in discovering persons engaged in unlawful racing on streets and highways and to those persons who fail to stop in the event of accidents and render assistance and furnish information with respect thereto to the nearest available peace officer. Nor shall this section prohibit the use of airplanes for observing unusually heavy congested traffic situations, such as occur during the State Fair, football games, and other such events, for the purpose of full coordination of traffic controls. (1963, c. 911, s. 1.)

#### ARTICLE 5.

##### *Enforcement of Collection of Judgments against Irresponsible Drivers of Motor Vehicles.*

§§ 20-197 to 20-211: Repealed by Session Laws 1947, c. 1006, s. 58.

#### ARTICLE 6.

##### *Giving Publicity to Highway Traffic Laws through the Public Schools.*

**§ 20-212. State Highway Commission to prepare digest.**—The State Highway Commission shall cause to be prepared a digest of the traffic laws of the State suitable for use in the public schools of the State and have published in pamphlet form and delivered on or before the first day of August, one thousand nine hundred and twenty-seven, to the State Superintendent of Public Instruction, a sufficient number of said pamphlets to supply at least one copy each to all of the public high school teachers of the State. (1927, c. 242, s. 1; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

**§ 20-213. State Superintendent of Public Instruction to distribute pamphlets.**—The State Superintendent of Public Instruction shall cause to be delivered to the superintendents or principals of the various high schools of the

State sufficient number of said pamphlets to supply one to each of the teachers engaged for said schools. (1927, c. 242, s. 2.)

§ 20-214. **Pamphlets brought to attention of children.** — The superintendents or principals, or other persons in charge of the public high schools of the State, shall cause the contents of said pamphlet to be brought to the attention of all the children in attendance upon the said high schools in the form of lessons of at least one each week until the entire contents of said pamphlet shall have been read and explained. (1927, c. 242, s. 3.)

§ 20-215. **Practice to be continued; Highway Commission to supply additional copies yearly.**—This practice shall be continued during each school year and the State Highway Commission is directed annually on or before the first Monday of August, to supply, as hereinbefore provided, such additional copies of the said pamphlet, having the same revised from time to time to meet any amendments of the traffic laws of the State, as the State Superintendent of Public Instruction may ascertain and report to the State Highway Commission to be necessary. (1927, c. 242, s. 4; 1957, c. 65, s. 11.)

#### ARTICLE 6A.

##### *Motor Carriers of Migratory Farm Workers.*

§ 20-215.1. **Definitions.**—Unless the context otherwise requires, the following terms and phrases shall have, for the purpose of this article, the following meaning:

- (1) "Migratory farm worker" means any individual being transported by motor carrier to or from employment in agriculture.
- (2) "Motor carrier of migratory farm workers" means any person, firm or corporation who or which for compensation transports at any one time in North Carolina five (5) or more migratory farm workers to or from their employment by any motor vehicle, other than a passenger automobile or station wagon, except a migratory farm worker transporting himself or his immediate family, but does not include any "common carrier" certified by the North Carolina Utilities Commission or the Interstate Commerce Commission; provided, the provisions of this article shall not apply to the transportation of migratory farm workers on a vehicle owned by a farmer when such migratory farm workers are employed or to be employed by the farmer to work on his own farm or farm controlled by him.
- (3) "Motor vehicle" means any vehicle which is self-propelled, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. (1961, c. 505, s. 1.)

§ 20-215.2. **Power to regulate; rules and regulations establishing minimum standards.**—Notwithstanding any other provisions of this chapter the North Carolina Department of Motor Vehicles, hereinafter referred to as "Department," is hereby vested with the power and duty to make and enforce reasonable rules and regulations applicable to motor carriers of migratory farm workers to and from their places of employment. The rules promulgated shall establish minimum standards:

- (1) For the construction and equipment of such vehicles, including coupling devices, lighting equipment, exhaust systems, rear vision mirrors, brakes, steering mechanisms, tires, windshield wipers and warning devices.
- (2) For the operation of such vehicles, including driving rules, distribution of passengers and load, maximum hours of service for drivers, minimum requirements of age and skill of drivers, physical conditions of

- drivers and permits, licenses or other credentials required of drivers.
- (3) For the safety and comfort of passengers in such vehicles, including emergency kits, fire extinguishers, first-aid equipment, side walls, seating accommodations, tail gates or doors, rest and meal stops, maximum number of passengers, and safe means of ingress and egress. (1961, c. 505, s. 2.)

**§ 20-215.3. Adoption of I.C.C. regulations; public hearings on rules and regulations; distribution of copies.**—The Department may adopt and enforce rules and regulations promulgated by the Interstate Commerce Commission, insofar as the Department finds such rules to be practicable in this State; shall conduct public hearings in connection with the formulation and adoption of rules and regulations; and shall cause the distribution of copies of such rules as are promulgated to interested persons and groups. (1961, c. 505, s. 3.)

**§ 20-215.4. Violation of regulations a misdemeanor.**—The violation of any rule or regulation promulgated by the Department hereunder by any person, firm or corporation shall be a misdemeanor, punishable by a fine of not more than fifty dollars (\$50.00) or by imprisonment for a period of not more than thirty days, or by both such fine and imprisonment. (1961, c. 505, s. 4.)

**§ 20-215.5. Duties and powers of law enforcement officers.**—It shall be the duty of the law enforcement officers of the State, and of each county, city or town, to enforce the rules promulgated hereunder in their respective jurisdictions; and such officers shall have the power to stop any motor vehicle upon the highways of this State for the purpose of determining whether or not such motor vehicle is being operated in violation of such rules. (1961, c. 505, s. 5.)

## ARTICLE 7.

### *Miscellaneous Provisions Relating to Motor Vehicles.*

**§ 20-216. Passing horses or other draft animals.**—A person operating or driving a motor vehicle shall, on signal by raising the hand, from a person riding, leading, or driving a horse or horses or other draft animals, bring such motor vehicle immediately to a stop, and, if traveling in the opposite direction, remain stationary so long as may be reasonable to allow such horse or other animal to pass, and, if traveling in the same direction, use reasonable caution in thereafter passing such horse or other animal: Provided, that in case such horse or other animal appears badly frightened, and the person operating such motor vehicle is so signaled to do, such person shall cause the motor of the motor vehicle to cease running so long as shall be reasonably necessary to prevent accident and insure the safety of others; and it shall also be the duty of any male chauffeur or driver of any motor vehicle and other male occupants thereof over the age of sixteen years while passing any horse, horses or other draft animals which appear frightened, upon the request of the person in charge thereof and driving such horse or horses or other draft animals, to give such assistance as would be reasonable to insure the safety of all persons concerned and to prevent accident. (1917, c. 140, s. 15; C. S., s. 2616.)

**Passing Animals.**—The laws with respect to passing animals, with the exception of establishing a speed limit, are to a great extent an embodiment of general principles of law applicable to motor vehicles when operated on the highway and in places where their use is likely to be a source of danger to others. *Tudor v. Bowen*, 152 N.C. 441, 67 S.E. 1015 (1910); *Gaskins v. Hancock*, 156 N.C. 56, 72 S.E.

80 (1911). See *Curry v. Fleer*, 157 N.C. 16, 72 S.E. 626 (1911).

Where the law prescribed a maximum speed limit for the running of motor vehicles upon the highways in approaching animals it did not contemplate or intend that the specified limits were always permissible; for one driving a machine of this character was charged with notice of things which he observed or could have



observed in the exercise of proper care, having regard to the nature of the vehicle he was operating and its tendency to frighten animals; and not infrequently it might have become his duty to move at a much slower speed, or stop altogether if

conditions so require. *Curry v. Fleece*, 157 N.C. 16, 72 S.E. 626 (1911).

**Cited in** *Goss v. Williams*, 196 N.C. 213, 145 S.E. 169 (1928); *York v. York*, 212 N.C. 695, 194 S.E. 486 (1938).

**§ 20-217. Motor vehicles to stop for school, church and Sunday school busses in certain instances.**—Every person using, operating, or driving a motor vehicle upon or over the roads or highways of the State of North Carolina, or upon or over any of the streets of any of the incorporated towns and cities of North Carolina, upon approaching from any direction on the same highway any school bus or privately-owned bus transporting children to or from school or any church or Sunday school bus transporting children to or from church or Sunday school, while such bus is stopped and engaged in receiving or discharging passengers therefrom upon the roads or highways of the State or upon any of the streets of any incorporated cities and towns of the State, shall bring such motor vehicle to a full stop before passing or attempting to pass such bus and shall remain stopped until said passengers are received or discharged at that place and until the "stop signal" of such bus has been withdrawn or until such bus has moved on; except, that the driver of a vehicle upon any highway which has been divided into two roadways, so constructed as to separate vehicular traffic between the two roadways by an intervening space or by a physical barrier, need not stop upon meeting or passing any bus which has stopped in the roadway across such dividing space or physical barrier. No operator of a school, church or Sunday school bus shall use the mechanical stop signal installed on such bus except for the purpose of indicating that such bus has stopped or is about to stop for the purpose of receiving or discharging passengers.

The provisions of this section are applicable only in the event the school, church, privately-owned bus or Sunday school bus bears upon the front and rear thereof a plainly visible sign containing the words "school bus" or the words "church bus" or "Sunday school bus" in letters not less than five inches in height.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed fifty dollars (\$50.00) or imprisoned not to exceed thirty days. (1925, c. 265; 1943, c. 767; 1947, c. 527; 1955, c. 1365; 1959, c. 909; 1965, c. 370.)

**Editor's Note.**—The 1965 amendment added the last sentence in the first paragraph.

**This section applies** to passing a school bus from either direction, from the rear or from the front. *State v. Webb*, 210 N.C. 350, 186 S.E. 241 (1936).

**A violation of this section is negligence per se**, but such violation must be proximate cause contributing to injury and death of intestate to warrant recovery on that ground. *Morgan v. Carolina Coach Co.*, 225 N.C. 668, 36 S.E.2d 263 (1945).

**Evidence Failing to Show Violation of This Section.**—The evidence tended to show that a school bus and two following cars stopped on the right side of the highway, that two children alighted, one of whom ran immediately in front of the bus across the highway, and the other, a boy eight years old waited until the three ve-

hicles were in motion and crossed the highway after the third vehicle had passed, and was struck by defendant's truck operated by defendant's agent which was traveling in the opposite direction about thirty miles per hour, and which failed to give any warning of its approach and failed to reduce speed prior to the collision. Held: Although the evidence fails to show a violation of the letter of this section, since the school bus was in motion and its stop signal had been withdrawn prior to the impact, the evidence is sufficient to be submitted to the jury upon the issues of the negligence of the driver of the truck and the contributory negligence of defendant's intestate. *Hughes v. Thayer*, 229 N.C. 773, 51 S.E.2d 488 (1949).

**Applied in** *Reeves v. Campbell*, 264 N.C. 224, 141 S.E.2d 296 (1965).

**§ 20-217.1. Receiving or discharging school bus passengers upon divided highway.**—It shall be unlawful for any principal or superintendent of any school, routing a school bus, to authorize the driver of any such busses to stop and receive or discharge passengers upon any highway which has been divided into two roadways where passengers would be required to cross the highway to reach their destination or to board the bus; provided, that passengers may be discharged or received at points where pedestrians and vehicular traffic is controlled by adequate stop-and-go traffic signals. (1959, c. 909.)

**§ 20-218. Standard qualifications for school bus drivers; speed limit.**—No person shall drive or operate a school bus over the public roads of North Carolina while the same is occupied by children unless said person shall be fully trained in the operation of motor vehicles, and shall furnish to the superintendent of the schools of the county in which said bus shall be operated a certificate from the Highway Patrol of North Carolina, or from any representative duly designated by the Commissioner of Motor Vehicles, and the chief mechanic in charge of school busses in said county showing that he has been examined by a member of the said Highway Patrol, or a representative duly designated by the Commissioner of Motor Vehicles, and said chief mechanic in charge of school busses in said county and that he is a fit and competent person to operate or drive a school bus over the public roads of the State. Notwithstanding the above, school activity busses may be operated by a person who holds a school bus driver's certificate or a chauffeur's license.

It shall be unlawful for any person to operate or drive a school bus loaded with children over the public roads of North Carolina at a greater rate of speed than thirty-five miles per hour. Provided, however, that as to school activity busses which are painted a different color from regular school busses and which are being used for transportation of students or others to or from places for participation in events other than regular classroom work, it shall be unlawful to operate such a school activity bus at a greater rate of speed than forty-five miles per hour.

Any person violating paragraph two of this section shall, upon conviction, be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty days. (1937, c. 397, ss. 1-3; 1941, c. 21; 1943, c. 440; 1945, c. 216; 1957, cc. 139, 595.)

**Cross Reference.**—As to selection and employment of school bus drivers, see § 115-185.

**Cited in** *Shue v. Scheidt*, 252 N.C. 561, 114 S.E.2d 237 (1960).

**§ 20-218.1:** Repealed by Session Laws 1949, c. 163, s. 1.

**Editor's Note.**—As to jurisdiction over violations of motor vehicle laws formerly vested in the superior courts by the re-

pealed section, see § 110-21.1 and note. For comment on the repealed section, see 21 N.C.L. Rev. 356.

**§ 20-219. Refund to counties of costs of prosecuting theft cases.**—Whenever the Motor Vehicle Department of the State has caused to be instituted criminal prosecutions in the superior court of any county of the State for violation of the automobile theft laws, and the county wherein such case was tried has incurred court costs incident thereto, upon certificate of the clerk of the superior court of said county showing an itemized statement thereof, and that the same has been paid, upon the approval of the Commissioner of Motor Vehicles and the Attorney General, the sum or sums so paid shall be refunded to said county, the same to be paid from the highway maintenance fund from receipts from the motor vehicle registration title fees.

This section shall apply to costs incurred in the prosecution of automobile theft cases only. (1929, c. 275; 1941, c. 36.)

## ARTICLE 8.

*Sales of Used Motor Vehicles Brought into State.*

§§ 20-220 to 20-223: Repealed by Session Laws 1945, c. 635.

## ARTICLE 9.

*Motor Vehicle Safety and Financial Responsibility Act.*

§§ 20-224 to 20-279: Repealed by Session Laws 1953, c. 1300, s. 35.

**Editor's Note.**—The repealing act is codified as § 20-279.35. For law now effective, see §§ 20-279.1 to 20-279.39. And see §§ 20-309 to 20-219.

Former § 20-232 has been re-enacted and renumbered as § 20-17.1.

Repealed §§ 20-230 and 20-231 were amended by Session Laws 1955, c. 1152, ss. 1 and 2.

For discussion of this article prior to its repeal, see 25 N.C.L. Rev. 455.

## ARTICLE 9A.

*Motor Vehicle Safety and Financial Responsibility Act of 1953.*

§ 20-279.1. **Definitions.**—The following words and phrases, when used in this article, shall, for the purposes of this article, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

- (1) "Commissioner": The Commissioner of Motor Vehicles of this State.
- (2) "Conviction": A conviction upon a plea of guilty, or of nolo contendere, or the determination of guilt by a jury or by a court though no sentence has been imposed or, if imposed, has been suspended, and it includes a forfeiture of bail or collateral deposited to secure appearance in court of the defendant, unless the forfeiture has been vacated.
- (3) "Judgment": Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.
- (4) "License": Any license, temporary instruction permit or temporary license issued under the laws of this State pertaining to the licensing of persons to operate motor vehicles.
- (5) "Motor vehicle": Every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.
- (6) "Nonresident": Every person who is not a bona fide resident of this State.
- (7) "Nonresident's operating privilege": The privilege conferred upon a non-resident by the laws of this State pertaining to the operation by him of a motor vehicle in this State.
- (8) "Operator": Every person who is in actual physical control of a motor vehicle.
- (9) "Owner": A person who holds the legal title of a motor vehicle, or in



the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of this article.

- (10) "Person": Every natural person, firm, co-partnership, association or corporation.
- (11) "Proof of financial responsibility": Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of \$5,000 because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of \$10,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$5,000 because of injury to or destruction of property of others in any one accident.
- (12) "State": Any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada. (1953, c. 1300, s. 1; 1955, c. 1152, s. 3; c. 1355.)

**Cross References.**—As to Vehicle Financial Responsibility Act of 1957, see §§ 20-309 to 20-319. As to liability insurance covering negligent operation of municipal vehicles, see §§ 160-191.1 through 160-191.5.

**Editor's Note.**—For comment on this article, see 31 N.C.L. Rev. 420 (1953). For comment on insurer's liability for intentionally inflicted injuries, see 43 N.C.L. Rev. 436 (1965).

**The object of the Motor Vehicle Safety and Financial Responsibility Act** was to provide protection to the public. *Indiana Lumbermens Mut. Ins. Co. v. Parton*, 147 F. Supp. 887 (M.D.N.C. 1957).

It is the purpose of the Financial Responsibility Act to provide protection for persons injured or damaged by the negligent operation of automobiles. *Hawley v. Indemnity Ins. Co. of North America*, 257 N.C. 381, 126 S.E.2d 161 (1962).

**Operators Must Be Financially Responsible.**—The legislatures of 1953 and 1955 required operators of motor vehicles in this State to be "financially responsible," and proof of financial responsibility is defined in this section. *Iowa Mut. Ins. Co. v. Fred M. Simmons, Inc.*, 262 N.C. 691, 138 S.E.2d 512 (1964).

**This Article and Article 13 to Be Construed in Pari Materia.**—The Motor Vehicle Safety and Financial Responsibility Act of 1953 applies to drivers whose licenses have been suspended and relates to the restoration of drivers' licenses, while the Vehicle Financial Responsibility Act of 1957 applies to all motor vehicle owners and relates to the registration of motor vehicles.

The two acts are complementary, and the latter does not repeal or modify the former but incorporates portions of the former by reference, and the two acts are to be construed in *pari materia* so as to harmonize them and give effect to both. *Faizan v. Grain Dealers Mut. Ins. Co.*, 254 N.C. 47, 118 S.E.2d 303 (1961).

**"Owner."**—This article explicitly defines the owner as the person who holds the legal title of a motor vehicle rather than one who merely has an equitable claim or title thereto. *Indiana Lumbermens Mut. Ins. Co. v. Parton*, 147 F. Supp. 887 (M.D.N.C. 1957).

The provision of this section that the mortgagor for the purposes of this statute shall also be the owner, clearly shows that the legislature intended to fix the responsibility on the holder of the legal title in fact except where the automobile is mortgaged, in which event the responsibility was attached to the mortgagor. *Indiana Lumbermens Mut. Ins. Co. v. Parton*, 147 F. Supp. 887 (M.D.N.C. 1957).

A defendant who advanced money for the purchase of a used car as security took a title-retaining contract on the vehicle and permitted its delivery to the purchasers, one of whom was operating it when an accident occurred, could not be liable to the persons injured, since under subdivision (9) of this section a conditional vendee, lessee, or mortgagor of a motor vehicle is deemed to be the owner and liability on the part of the defendant could arise only by application of the doctrine of respondeat superior. Such facts do not show the necessary relationship. *High Point Sav. & Trust*

Co. v. King, 253 N.C. 571, 117 S.E.2d 421 (1960).

**Section Reduces Importance of Family Purpose Doctrine.**—The importance of the family purpose doctrine in this State has been greatly reduced by this section. *Smith v. Simpson*, 260 N.C. 601, 133 S.E.2d 474 (1963).

**§ 20-279.2. Commissioner to administer article; appeal to court.**—

(a) The Commissioner shall administer and enforce the provisions of this article and may make rules and regulations necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the Commissioner under the provisions of this article.

(b) Any person aggrieved by an order or act of the Commissioner requiring a suspension or revocation of his license under the provisions of this article, or requiring the posting of security as provided in this article, or requiring the furnishing of proof of financial responsibility, may file a petition in the superior court of the county in which the petitioner resides for a review, and the commencement of such a proceeding shall suspend the order or act of the Commissioner pending the final determination of the review. A copy of such petition shall be served upon the Commissioner, and the Commissioner shall have twenty days after such service in which to file answer. The appeal shall be heard in said county by the judge holding court in said county or by the resident judge. At the hearing upon the petition the judge shall sit without the intervention of a jury and shall receive such evidence as shall be deemed by the judge to be relevant and proper. Except as otherwise provided in this section, upon the filing of the petition herein provided for, the procedure shall be the same as in civil actions.

The matter shall be heard de novo and the judge shall enter his order affirming the act or order of the Commissioner, or modifying same, including the amount of bond or security to be given by the petitioner. If the court is of the opinion that the petitioner was probably not guilty of negligence or that the negligence of the other party was probably the sole proximate cause of the collision, the judge shall reverse the act or order of the Commissioner. Either party may appeal from such order to the Supreme Court in the same manner as in other appeals from the superior court and the appeal shall have the effect of further staying the act or order of the Commissioner requiring a suspension or revocation of the petitioner's license.

No act, or order given or rendered in any proceeding hereunder shall be admitted or used in any other civil or criminal action. (1953, c. 1300, s. 2.)

This section makes no provision for intervention by persons who might recover damages from petitioner based on his actionable negligence in connection with an accident. *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**But Commissioner May Notify Them of Hearing.** — Persons who might recover damages from petitioner based on petitioner's actionable negligence in connection with an accident have no standing in a proceeding under subsection (b) as a matter of right. Even so, it is appropriate that the Commissioner notify such persons of the petition and of the hearing to the end that all competent and relevant evidence may be brought forward. *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**Farm Tractor Is Not "Motor Vehicle."** —See *Brown v. Fidelity & Cas. Co.*, 241 N.C. 666, 86 S.E.2d 433 (1955), decided under repealed § 20-226, which covered the same subject matter as this section.

**And Court May Permit Such Persons to File Statements and Participate in Hearing.**—While persons who might recover damages from petitioner based on petitioner's actionable negligence in connection with an accident may not be considered proper parties to the proceeding in a technical sense, the court, in its discretion, may permit such persons to file a statement relevant to the facts alleged in the petition and may permit them to participate in the hearing. *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**However, Such Statements Are Not Evidence.** — Statements by persons not considered proper parties to the proceeding in the technical sense, whether denominated an answer, affidavit, or otherwise, may not be considered competent evidence in the

hearing. *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**Commissioner Must Answer Petition.** — Subsection (b) imposes upon the Commissioner (or his representative) the duty to answer all essential allegations of the petition and to be present and participate in the hearing before the judge. *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**And Produce All Pertinent Evidence.** — While the statute provides that the court shall make the crucial determinations, the statute contemplates that the Commissioner shall bring forward for the court's consideration all evidence in his possession pertinent to decision. *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**Filing Petition Is Equivalent to Supersedeas.** — The filing of a petition under subsection (b) of this section to review the Commissioner's order is the equivalent of

a supersedeas suspending the order until the question at issue has been determined by the superior court. *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

**The burden of proof** is on petitioner to show he "was probably not guilty of negligence" or "that the negligence of the other party was probably the sole proximate cause of the collision." *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**Appeal to Supreme Court.** — Where, upon petition for review of order of the Commissioner of Motor Vehicles suspending petitioners' operator's licenses, the owner of the other car involved in the collision is made a party by consent order and files answer, such owner must be served with statement of case on appeal to the Supreme Court. *Johnson v. Scheidt*, 246 N.C. 452, 98 S.E.2d 451 (1957).

**§ 20-279.3. Commissioner to furnish operating record.** — The Commissioner shall upon request furnish any person a certified abstract of the operating record of any person required to comply with the provisions of this article, which abstract shall also fully designate the motor vehicle, if any, registered in the name of such person, and if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the Commissioner shall so certify. (1953, c. 1300, s. 3.)

**§ 20-279.4. Information required in accident report.** — In case of an accident in which any person is killed or injured or in which damage to the property of any one person in excess of \$100.00 is sustained, the report required by § 20-166 or § 20-166.1 shall contain information to enable the Commissioner to determine whether the requirements for the deposit of security under § 20-279.5 are inapplicable by reason of the existence of insurance or other exceptions specified in this article. The Commissioner may rely upon the accuracy of the information unless and until he has reason to believe that the information is erroneous. The operator or the owner shall furnish such additional relevant information as the Commissioner shall require. (1953, c. 1300, s. 4.)

**Cross Reference.** — See note to § 20-279.5.

**Information Required from Operator.** — The operator of a motor vehicle is required by this section to inform the Department, when he notifies it of the accident, whether he carried liability insurance or was exempt from the statutory provision. *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

**Right of Injured Party Not Impaired by Insured's Failure to Notify Insurer or**

**Report Accident.** — The right of an injured party, after recovery of unsatisfied judgment against insured, to recover against insurer in an assigned risk liability policy may not be defeated by the failure of insured to notify insurer of the accident or failure of insured to file an accident report with the Department of Motor Vehicles. *Lane v. Iowa Mut. Ins. Co.*, 258 N.C. 318, 128 S.E.2d 398 (1962).

**§ 20-279.5. Security required unless evidence of insurance; when security determined; suspension; exceptions.** — (a) If at the expiration of twenty days after the receipt of a report of a motor vehicle accident within this State which has resulted in bodily injury or death or damage to the property of any one person in excess of \$100.00, the Commissioner does not have on file evidence satisfactory to him that the person who would otherwise be required to file



security under subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount, in installments or otherwise, or is for any other reason not required to file security under this article with respect to all claims for injuries or damages resulting from the accident, the Commissioner shall determine the amount of security which shall be sufficient in his judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b) The Commissioner shall, within sixty days after the receipt of such report of a motor vehicle accident, suspend the license of each operator and each owner of a motor vehicle in any manner involved in such accident, and if such operator or owner is a nonresident the privilege of operating a motor vehicle within this State, unless such operator or owner, or both, shall deposit security in the sum so determined by the Commissioner; provided, notice of such suspension shall be sent by the Commissioner to such operator and owner not less than ten days prior to the effective date of such suspension and shall state the amount required as security; provided further, the provisions of this article requiring the deposit of security and the suspension of license for failure to deposit security shall not apply to an operator or owner who would otherwise be required to deposit security in an amount not in excess of one hundred dollars (\$100.00). Where erroneous information is given the Commissioner with respect to the matters set forth in subdivisions (1), (2) or (3) of subsection (c) of this section or with respect to the ownership or operation of the vehicle, the extent of damage and injuries, or any other matters which would have affected the Commissioner's action had the information been previously submitted, he shall take appropriate action as hereinbefore provided, within sixty days after receipt by him of correct information with respect to said matters. The Commissioner, upon request and in his discretion, may postpone the effective date of the suspension provided in this section by fifteen days if, in his opinion, such extension would aid in accomplishing settlements of claims by persons involved in accidents.

(c) This section shall not apply under the conditions stated in § 20-279.6 nor:

- (1) To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;
- (2) To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;
- (3) To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Commissioner, covered by any other form of liability insurance policy or bond or sinking fund or group assumption of liability;
- (4) To any person qualifying as a self-insurer, nor to any operator for a self-insurer if, in the opinion of the Commissioner from the information furnished him, the operator at the time of the accident was probably operating the vehicle in the course of the operator's employment as an employee or officer of the self-insurer; nor
- (5) To any employee of the United States government while operating a vehicle in its service and while acting within the scope of his employment, such operations being fully protected by the Federal Tort Claims Act of 1946, which affords ample security to all persons sustaining personal injuries or property damage through the negligence of such federal employee.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of

the policy or bond, or the most recent renewal thereof, or if such operator not an owner was a nonresident of this State, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action upon such policy, or bond arising out of such accident, and unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction where the motor vehicle is registered or, if such policy or bond is filed on behalf of an operator not an owner who was a nonresident of this State, unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction of residence of such operator; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and cost, of not less than five thousand dollars (\$5,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than ten thousand dollars (\$10,000.00) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident. (1953, c. 1300, s. 5; 1955, cc. 138, 854; c. 855, s. 1; c. 1152, ss. 4-8; c. 1355.)

**Effect of Section.**—This section makes it the duty of the Commissioner to suspend the driver's license if the owner-operator fails to discharge his liability for the damage resulting from the collision. *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

**Act of Commissioner in suspending an operator's license is quasi-judicial.** *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

**And it cannot be collaterally attacked.** *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

The driver of an automobile may not sue his insurer for damages resulting from the revocation of his driver's license resulting from the false representation of his insurer that the driver did not have insurance in force at the time he was involved

in an accident, since such action amounts to a collateral attack upon the order of the Commissioner suspending the license and is based on subornation of perjury. *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

**Plaintiff is entitled to hearing on factual question of whether he was insured.** *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

The second sentence in subsection (b) of this section gives the owner-operator of the motor vehicle full opportunity to present his evidence to the Commissioner to establish the fact that he did carry insurance as required. *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

**Applied in** *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**§ 20-279.6. Further exceptions to requirement of security.**—The requirements as to security and suspension in § 20-279.5 shall not apply:

- (1) To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of any one other than such operator or owner;
- (2) To the operator or the owner of a motor vehicle legally parked at the time of the accident;
- (3) To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission;
- (4) If, prior to the date that the Commissioner would otherwise suspend the license or the nonresident's operating privilege under § 20-279.5, there shall be filed with the Commissioner evidence satisfactory to him that the person who would otherwise have to file security has been re-

leased from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount, in installments or otherwise, with respect to all claims for injuries or damages resulting from the accident;

- (5) If, prior to the date that the Commissioner would otherwise suspend the license or the nonresident's operating privilege under § 20-279.5, there shall be filed with the Commissioner evidence satisfactory to him that the person who would otherwise be required to file security has in any manner settled the claims of the other persons involved in the accident and if the Commissioner determines that, considering the circumstances of the accident and the settlement, the purposes of this article and of protection of operators and owners of other motor vehicles are best accomplished by not requiring the posting of security or the suspension of the license. For the purpose of administering this subdivision, the Commissioner may consider a settlement made by an insurance company as the equivalent of a settlement made directly by the insured; nor
- (6) If, prior to the date that the Commissioner would otherwise suspend the license or the nonresident's operating privilege under § 20-279.5, there shall be filed with the Commissioner evidence satisfactory to him that another person involved in the accident has been convicted by a court of competent jurisdiction of a crime involving the operation of a motor vehicle at the time of the accident, and if the Commissioner in his discretion determines, after considering the circumstances of the accident or the nature and the circumstances of the crime, that the purpose of this article and of protection of operators and owners of other motor vehicles are best accomplished by not requiring the posting of security or the suspension of the license. (1953, c. 1300, s. 6; 1955, c. 1152, ss. 9, 10.)

§ 20-279.6a. **Minors.**—In determining whether or not any of the exceptions set forth in § 20-279.6 have been satisfied, in the case of accidents involving minors, the Commissioner may accept, for the purpose of this article only, as valid releases on account of claims for injuries to minors or damage to the property of minors releases which have been executed by the parent of the minor having custody of the minor or by the guardian of the minor if there be one. In the case of an emancipated minor, the Commissioner may accept a release signed by or a settlement agreed upon by the minor without the approval of the parents of the minor. If in the opinion of the Commissioner the circumstances of the accident, the nature and extent of the injuries or damage, or any other circumstances make it advisable for the best protection of the interest of the minor, the Commissioner may decline to accept such releases or settlements and may require the approval of the superior court. (1955, c. 1152, s. 11.)

§ 20-279.7. **Duration of suspension.**—The license and nonresident's operating privilege suspended as provided in § 20-279.5 shall remain so suspended and shall not be renewed nor shall any such license be issued to such person until:

- (1) Such person shall deposit or there shall be deposited on his behalf the security required under § 20-279.5;
- (2) One year shall have elapsed following the date of such suspension and evidence satisfactory to the Commissioner has been filed with him that during such period no action for damages arising out of the accident has been instituted; or
- (3) Evidence satisfactory to the Commissioner has been filed with him of a release from liability, or a final adjudication of nonliability, or a duly acknowledged written agreement, in accordance with subdivision (4)



of § 20-279.6 or a settlement accepted by the Commissioner as provided in subdivision (5) of § 20-279.6, or a conviction accepted by the Commissioner as provided in subdivision (6) of § 20-279.6; provided, however, in the event there shall be any default in the payment of any installment or sum under any duly acknowledged written agreement, then, upon notice of such default, the Commissioner shall forthwith suspend the license or nonresident's operating privilege of such person defaulting which shall not be restored unless and until:

- a. Such person deposits and thereafter maintains security as required under § 20-279.5 in such amount as the Commissioner may then determine; or
- b. One year shall have elapsed following the date when such security was required and during such period no action upon such agreement has been instituted in a court in this State. (1953, c. 1300, s. 7; 1955, c. 1152, s. 12.)

**§ 20-279.8. Application to nonresidents, unlicensed drivers, unregistered motor vehicles and accidents in other states.**—(a) In case the operator or the owner of a motor vehicle involved in an accident within this State has no license, or is a nonresident, he shall not be allowed a license until he has complied with the requirements of this article to the same extent that it would be necessary if, at the time of the accident, he had held a license.

(b) When a nonresident's operating privilege is suspended pursuant to § 20-279.5 or § 20-279.7, the Commissioner shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses in the state in which such nonresident resides, if the law of such other state provides for action in relation thereto similar to that provided for in subsection (c) of this section.

(c) Upon receipt of such certification that the operating privilege of a resident of this State has been suspended or revoked in any such other state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the Commissioner to suspend a nonresident's operating privilege had the accident occurred in this State the Commissioner shall suspend the license of such resident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such other state relating to the deposit of such security. (1953, c. 1300, s. 8.)

**§ 20-279.9. Form and amount of security.**—The security required under this article shall be in such form and in such amount as the Commissioner may require but in no case in excess of the limits specified in § 20-279.5 in reference to the acceptable limits of a policy or bond. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the Commissioner or State Treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

The Commissioner may reduce the amount of security ordered in any case if, in his judgment, the amount ordered is excessive. In case the security originally ordered has been deposited the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of § 20-279.10. (1953, c. 1300, s. 9.)

**§ 20-279.10. Custody, disposition and return of security.**—Security deposited in compliance with the requirements of this article shall be placed by the Commissioner in the custody of the State Treasurer and shall be applicable

only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than one year after the date of such accident, or within one year after the date of deposit of any security under subdivision (3) of § 20-279.7, or to the payment in settlement, agreed to by the depositor, of a claim or claims arising out of such accident. Such deposit or any balance thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the Commissioner has been filed with him that there has been a release from liability, or a final adjudication of nonliability, or a duly acknowledged agreement, in accordance with subdivision (4) of § 20-279.6, or a settlement accepted by the Commissioner as provided in subdivision (5) of § 20-279.6, or a conviction accepted by the Commissioner as provided in subdivision (6) of § 20-279.6, or whenever, after the expiration of one (1) year from the date of the accident, or from the date of deposit of any security under subdivision (3) of § 20-279.7, whichever is later, the Commissioner shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid. (1953, c. 1300, s. 10; 1955, c. 1152, s. 13.)

**§ 20-279.11. Matters not to be evidence in civil suits.**—Neither the report required by § 20-279.4, the action taken by the Commissioner pursuant to this article, the findings, if any, of the Commissioner upon which such action is based, or the security filed as provided in this article shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. (1953, c. 1300, s. 11.)

**§ 20-279.12. Courts to report nonpayment of judgments.**—Whenever any person fails within sixty (60) days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this State, to forward to the Commissioner immediately after the expiration of said sixty (60) days, a certified copy of such judgment.

If the defendant named in any certified copy of a judgment reported to the Commissioner is a nonresident, the Commissioner shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident. (1953, c. 1300, s. 12.)

**§ 20-279.13. Suspension for nonpayment of judgment; exceptions.**—(a) The Commissioner, upon the receipt of a certified copy of a judgment, which has remained unsatisfied for a period of sixty (60) days, shall forthwith suspend the license and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in § 20-279.16.

(b) The Commissioner shall not, however, revoke or suspend the license of an owner, operator or chauffeur if the insurance carried by him was in a company which was authorized to transact business in this State and which subsequent to an accident involving the owner or operator and prior to settlement of the claim therefor went into liquidation, so that the owner, operator, or chauffeur is thereby unable to satisfy the judgment arising out of the accident.

(c) If the judgment creditor consents in writing, in such form as the Commissioner may prescribe, that the judgment debtor be allowed license or nonresident's operating privilege, the same may be allowed by the Commissioner, in his discretion, for six (6) months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in § 20-279.16, provided the judgment debtor furnishes proof of financial responsibility. (1953, c. 1300, s. 13; 1965, c. 926, s. 1.)

**Editor's Note.** — The 1965 amendment added present subsection (b) and redesignated former subsection (b) as subsection (c).

Section 2, c. 926, Session Laws 1965, provides: "Any license heretofore revoked or suspended by the Commissioner, con-

trary to the provisions of s. 1 of this act, shall be returned to the licensee when said person gives proof of financial responsibility as provided in this article."

**Cited in** *Hunnicut v. Shelby Mut. Ins. Co.*, 255 N.C. 515, 122 S.E.2d 74 (1961).

**§ 20-279.14. Suspension to continue until judgments paid and proof given.**—Such license and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in §§ 20-279.13 and 20-279.16 of this article.

A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article. (1953 c. 1300, s. 14.)

**Effect of § 20-279.36.**—This section shall not apply with respect to any accident or judgment arising therefrom, or violation of the Motor Vehicle Laws of this State, oc-

curing prior to the effective date of this section, under the provisions of § 20-279.36. *Justice v. Scheidt*, 252 N.C. 361, 113 S.E.2d 709 (1960).

**§ 20-279.15. Payment sufficient to satisfy requirements.**—In addition to other methods of satisfaction provided by law, judgments herein referred to shall, for the purpose of this article, be deemed satisfied:

- (1) When five thousand dollars (\$5,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or
- (2) When, subject to such limit of five thousand dollars (\$5,000.00) because of bodily injury to or death of one person, the sum of ten thousand dollars (\$10,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or
- (3) When five thousand dollars (\$5,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section. (1953, c. 1300, s. 15; 1963, c. 1238.)

**Editor's Note.**—The 1963 amendment substituted "five thousand dollars (\$5,000.- 00)" for "one thousand dollars (\$1,000.- 00)" near the beginning of subdivision (3).

**§ 20-279.16. Installment payment of judgments; default.**—(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The Commissioner shall not suspend a license or a nonresident's operating privilege, and shall restore any license or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the pay-



ment of such judgment in installments, and while the payment of any said installment is not in default.

(c) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the Commissioner shall forthwith suspend the license or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this article. (1953, c. 1300, s. 16.)

**§ 20-279.17. Proof required upon certain convictions.** — (a) Whenever the Commissioner suspends or revokes the license of any person under the provisions of article 2 of this chapter such license shall remain suspended or revoked and shall not at any time thereafter be reinstated nor shall any license be thereafter issued to such person, until permitted under the Motor Vehicle Laws of this State and not then unless and until he shall give and thereafter maintain, for the period provided by law, proof of financial responsibility, except as provided in G.S. 20-16.1; provided, whenever the motor vehicle operator's or chauffeur's license of any person has been suspended, cancelled or revoked under the provisions of article 2 of this chapter and the period of such suspension, cancellation or revocation shall have expired, and such person shall have met the requirements of this article as a condition precedent to the right to have such license restored or reissued such license shall be immediately restored or reissued to such person subject to such a re-examination, if any, as the Commissioner may require.

(b) If a person is not licensed, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, no license shall be thereafter issued to such person until he shall give and thereafter maintain proof of financial responsibility.

(c) Whenever the Commissioner suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility. (1953, c. 1300, s. 17; 1955, c. 1152, s. 14.)

**§ 20-279.18. Alternate methods of giving proof.** — Proof of financial responsibility when required under this article with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

- (1) A certificate of insurance as provided in § 20-279.19 or § 20-279.20; or
- (2) A bond as provided in § 20-279.24; or
- (3) A certificate of deposit of money or securities as provided in § 20-279.25; or
- (4) A certificate of self-insurance, as provided in § 20-279.33, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer. (1953, c. 1300, s. 18.)

**§ 20-279.19. Certificate of insurance as proof.**—Proof of financial responsibility may be furnished by filing with the Commissioner the written certificate of any insurance carrier duly authorized to do business in this State certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the

policy is issued to a person who is not the owner of a motor vehicle. The Commissioner may require that certificates filed pursuant to this section be on a form approved by the Commissioner. (1953, c. 1300, s. 19; 1955, c. 1152, s. 16.)

**Filing Does Not Estop Insurer from Denying Coverage.**—The filing, as required by this section, does not estop an insurance carrier from thereafter denying coverage under the policy. *Seaford v. Nationwide*

Mut. Ins. Co., 253 N.C. 719, 117 S.E.2d 733 (1961).

**Cited in** *Faizan v. Grain Dealers Mut. Ins. Co.*, 254 N.C. 47, 118 S.E.2d 303 (1961).

**§ 20-279.20. Certificate furnished by nonresident as proof.**—(a) The nonresident owner of a motor vehicle not registered in this State may give proof of financial responsibility by filing with the Commissioner a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate is registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms to the provisions of this article, and the Commissioner shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

- (1) Said insurance carrier shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this State; and
- (2) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this State relating to the terms of motor vehicle liability policies issued herein.

(b) If any insurance carrier not authorized to transact business in this State, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the Commissioner shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

(c) The Commissioner may require that certificates and powers filed pursuant to this section be on forms approved by the Commissioner. (1953, c. 1300, s. 20; 1955, c. 1152, s. 17.)

**Cited in** *Faizan v. Grain Dealers Mut. Ins. Co.*, 254 N.C. 47, 118 S.E.2d 303 (1961).

**§ 20-279.21. "Motor vehicle liability policy" defined.**—(a) A "motor vehicle liability policy" as said term is used in this article shall mean an owner's or an operator's policy of liability insurance, certified as provided in § 20-279.19 or § 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in § 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance:

- (1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;
- (2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: Five thousand dollars (\$5,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, ten thousand dollars (\$10,000.00) because

- of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident; and
- (3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in subsection (c) of § 20-279.5, under provisions filed with and approved by the Insurance Commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motorist coverage is in effect where the liability insurer of the injury, sickness or disease, including death, resulting therefrom; and provided that an insured shall be entitled to secure increased limits coverage of ten thousand dollars (\$10,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, twenty thousand dollars (\$20,000.00) because of bodily injury to or death of two or more persons in any one accident if the policy of such insured carries liability limits of equal or greater amounts for the protection of third persons. Such provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident of five thousand dollars (\$5,000.00) and subject, for each insured, to an exclusion of the first one hundred dollars (\$100.00) of such damages. Such provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that such other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of such other motor vehicle was uninsured at the time of the accident with the insured, for the purposes of recovery under this provision of the insured's liability insurance policy. The coverage required under this section shall not be applicable where any insured named in the policy shall reject the coverage.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motor vehicles and hit-and-run motor vehicles because of bodily tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.



For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is such insurance but the insurance company writing the same denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or G.S. 20-279.25 in lieu of such bodily injury and property damage liability insurance, or the owner of such motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

- a. A motor vehicle owned by the named insured;
- b. A motor vehicle which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
- c. A motor vehicle which is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);
- d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
- e. A farm type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, and within thirty (30) days following the date of its delivery to him of any motor vehicle owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this article as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this article.

(e) Such motor vehicle liability policy need not insure any liability under any workmen's compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

- (1) The liability of the insurance carrier with respect to the insurance required by this article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be cancelled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy;
- (2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the

insurance carrier to make payment on account of such injury or damage;

(3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2) of subsection (b) of this section;

(4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the article shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this article. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this article.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy. (1953, c. 1300, s. 21; 1955, c. 1355; 1961, c. 640; 1965, c. 156; c. 674, s. 1; c. 898.)

**Editor's Note.**—The first 1965 amendment added the present second, third and fourth paragraphs of subdivision (3) of subsection (b). The second 1965 amendment added the proviso at the end of the first sentence of that subdivision. Section 3 of c. 674, Session Laws 1965, provides that the act shall apply only to new and renewal automobile liability insurance policies issued on and after Sept. 1, 1965.

The third 1965 amendment added the third sentence in the first paragraph of subdivision (3) of subsection (b) and added all of that subdivision following the present fourth paragraph thereof.

For note on automobile liability policies, see 35 N.C.L. Rev. 313 (1957). For note on permissive user under the omnibus clause, see 41 N.C.L. Rev. 232 (1963). For note on liability of insurer without notice, see 41 N.C.L. Rev. 853 (1963). For note on insurer's liability for injuries intentionally inflicted by insured by use of automobile, see 43 N.C.L. Rev. 436 (1965).

The manifest purpose of this article was to provide protection, within the required limits, to persons injured or damaged by the negligent operation of a motor vehicle; and, in respect of a "motor vehicle liability policy," to provide such protection not-

withstanding violations of policy provisions by the owner subsequent to accidents on which such injured parties base their claims. *Nixon v. Liberty Mut. Ins. Co.*, 255 N.C. 106, 120 S.E.2d 430 (1961), quoting *Swain v. Nationwide Mut. Ins. Co.*, 253 N.C. 120, 116 S.E.2d 482 (1960); *Lane v. Iowa Mut. Ins. Co.*, 258 N.C. 318, 128 S.E.2d 398 (1962).

The primary purpose of compulsory motor vehicle liability insurance is to compensate innocent victims who have been injured by financially irresponsible motorists. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**Obligations Imposed by Article.** — The Motor Vehicle Financial Responsibility Act obliges a motorist either to post security or to carry liability insurance, not accident insurance to indemnify all persons who might be injured by the insured's car. *Moore v. Young*, 263 N.C. 483, 139 S.E.2d 704 (1965).

**Article Provides for Issuance of Owner's Policy and Operator's Policy.**—The provisions of this article provide for motor vehicle insurance carriers to issue two types of motor vehicle liability policies; one is an owner's policy, which insures the holder against legal liability for injuries to others

arising out of the ownership, use or operation of a motor vehicle owned by him; and the other is an operator's policy, which insures the holder against legal liability for injuries to others arising out of the use by him of a motor vehicle not owned by him. *Woodruff v. State Farm Mut. Auto. Ins. Co.*, 260 N.C. 723, 133 S.E.2d 704 (1963).

**And whether policy insures owner as an owner or as an operator depends on intent of parties.** That intent must be ascertained from the language used in the written contract. *Lofquist v. Allstate Ins. Co.*, 263 N.C. 615, 140 S.E.2d 12 (1965).

**Policies Are Mandatory.**—In this State, all insurance policies covering loss from liability arising out of the ownership, maintenance, or use of a motor vehicle are, to the extent required by this section, mandatory. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**Except as to Excess over Compulsory Coverage.** — All insurance policies which insure in excess of the compulsory coverage of this section are voluntary policies to the extent of the excess. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**Coverage of Owner's Policy Limited to Vehicle Described.** — An owner's policy does not protect against liability resulting from the use of a motor vehicle not described in the policy. *Lofquist v. Allstate Ins. Co.*, 263 N.C. 615, 140 S.E.2d 12 (1965).

**As Is Coverage of Owner's Assigned Risk Policy.**—This article does not require an owner's assigned risk policy to cover any liability except that growing out of the operation of the motor vehicle described in the policy. *Woodruff v. State Farm Mut. Auto. Ins. Co.*, 260 N.C. 723, 133 S.E.2d 704 (1963).

An owner's policy issued pursuant to the assigned risk statute of this State obligates the insurer to pay any liability the insured becomes liable to pay by reason of the operation of the automobile described in the policy up to the limit of \$5,000.00. *Woodruff v. State Farm Mut. Auto. Ins. Co.*, 260 N.C. 723, 133 S.E.2d 704 (1963).

**That each driver in a two-car collision would recover from the other's insurance carrier** was not in the legislative contemplation when the legislature passed this article. *Moore v. Young*, 263 N.C. 483, 139 S.E.2d 704 (1965).

**Liability of Insurer after Effective Date of Article 13.**—Under subsection (f) (1) of this section, if insured becomes legally obligated for the payment of damages on account of a collision occurring after the ef-

fective date of article 13, insurer's liability becomes absolute as of the date of the collision if the policy is then valid and in force, and subsequent violations of policy provisions by the insured cannot affect the liability of insurer to a person injured in such collision as the result of insured's negligence, although insured may be liable to insurer for damages resulting to insurer as the result of breach of the policy provision. *Swain v. Nationwide Mut. Ins. Co.*, 253 N.C. 120, 116 S.E.2d 482 (1960).

**In Absence of Statutory Provision, Liability Measured by Terms of Policy.**—In the absence of any provision in the Financial Responsibility Act broadening the liability of the insurer, such liability must be measured by the terms of its policy as written. *Underwood v. National Grange Mut. Liab. Co.*, 258 N.C. 211, 128 S.E.2d 577 (1962).

**Policy Violations.**—Under subsection (f) (1) of this section, policy violations do not defeat or avoid the policy in respect of a plaintiff's right to recover from defendant insurer the amount of the judgment establishing insured's legal liability to plaintiff. *Swain v. Nationwide Mut. Ins. Co.*, 253 N.C. 120, 116 S.E.2d 482 (1960).

As to the compulsory coverage provided by a motor vehicle liability policy as defined in this section, issued as proof of financial responsibility as defined in § 20-279.1, subsection (f) (1) of this section provides explicitly that "no violation of said policy shall defeat or void said policy." *Swain v. Nationwide Mut. Ins. Co.*, 253 N.C. 120, 116 S.E.2d 482 (1960).

Under subsection (f) (1) of this section insured's failure to comply with policy provisions as to notice of accident and of suit did not defeat the injured party's right to recover from the insurer the amount of a judgment by which insured's legal obligation to the injured party was finally determined. *Lane v. Iowa Mut. Ins. Co.*, 258 N.C. 318, 128 S.E.2d 398 (1962).

No violation of the provisions of an owner's policy as an assigned risk will void the policy where the liability thereunder has been incurred by reason of the insured's operation of the automobile described in the policy. *Woodruff v. State Farm Mut. Auto. Ins. Co.*, 260 N.C. 723, 133 S.E.2d 704 (1963).

The failure of insured under an assigned risk policy to give notice of an accident occurring while he was driving an automobile other than the one named in the policy precludes recovery by the insured or by the injured third person against insurer, even though the policy contains ad-



ditional coverage, if insured is driving another vehicle, since such additional coverage is not required by this article and therefore the provisions of this article are not applicable thereto. *Woodruff v. State Farm Mut. Auto. Ins. Co.*, 260 N.C. 723, 133 S.E.2d 704 (1963).

**Coverage in a policy with respect to the use of other automobiles** is in addition to the coverage required by this article. *Woodruff v. State Farm Mut. Auto. Ins. Co.*, 260 N.C. 723, 133 S.E.2d 704 (1963).

An assigned risk policy of automobile insurance specifying the vehicle covered by the policy does not cover another vehicle owned by insured in the absence of a provision in the policy for extension of coverage or approval by insurer of a change in the vehicle covered. *Miller v. New Amsterdam Cas. Co.*, 245 N.C. 526, 96 S.E.2d 860 (1957), decided under repealed § 20-227, which covered the same subject matter as this section.

Where an assigned risk policy of automobile liability insurance provided for the payment of additional premium for application of the policy to a newly acquired vehicle, and insurer, upon notification that insured had traded in the vehicle covered for another, advised insured that it would issue endorsement covering the second vehicle upon payment of additional premium in a stipulated amount, and there was no evidence that the additional premium was ever paid or the endorsement issued under the Motor Vehicle Safety and Financial Responsibility Act of 1947, the policy did not cover loss inflicted in the operation of the second vehicle, nor was insurer estopped from denying liability by reason of its failure to return the unearned premium on the original policy or its failure to cancel it. *Miller v. New Amsterdam Cas. Co.*, 245 N.C. 526, 96 S.E.2d 860 (1957).

**Exclusionary Provisions.**—If an exclusionary provision of an assigned risk policy contravenes this article, it is void. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

There is nothing in this article which authorizes the insurance company to exclude by the terms of its policy liability of the operator of an automobile if it is an automobile owned by a member of his household, and such a clause in the policy being repugnant to and in conflict with the provisions of this article is void and of no effect. *Indiana Lumbermens Mut. Ins. Co. v. Parton*, 147 F. Supp. 887 (M.D.N.C. 1957).

**Effect of Issuance of FS-1.**—By the issuance of an FS-1 an insurer represents

that it has issued and there is in effect an owner's motor vehicle liability policy. *Harris v. Nationwide Mut. Ins. Co.*, 261 N.C. 499, 135 S.E.2d 209 (1964).

By the issuance of an FS-1, the insurer represents that everything requisite for a binding insurance policy has been performed, including payment, or satisfactory arrangement for payment, of premium. Once the FS-1 has been issued, nonpayment of premium, nothing else appearing, is no defense in a suit by a third party beneficiary against insurer. *Harris v. Nationwide Mut. Ins. Co.*, 261 N.C. 499, 135 S.E.2d 209 (1964).

As between insurer and insured, the issuance by insurer of Form FS-1 stating thereon that insurance was effective, does not estop insurer from denying that the policy was in force or that notice of the accident was given as required by the policy. *Harris v. Nationwide Mut. Ins. Co.*, 261 N.C. 499, 135 S.E.2d 209 (1964).

**Construction of Assigned Risk Policy.**—

An assigned risk policy providing no coverage in excess of the statutory requirement must be construed in connection with the public policy which the Motor Vehicle Safety and Financial Responsibility Act embodies. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**Construction of Provision Requiring "Omnibus Clause."** — Statutes requiring the insertion in automobile liability policies of the "omnibus clause," extending the provisions of the policy to persons using the automobile with the express or implied permission of the named insured, reflect a clear cut policy to protect the public. They should be construed and applied so as to carry out this policy. *Chatfield v. Farm Bureau Mut. Auto. Ins. Co.*, 208 F.2d 250 (4th Cir. 1953), decided under repealed § 20-227, which covered the same subject matter as this section.

In subsection (b) (2) the legislature intended no more radical coverage than is expressed in the moderate rule of construction, i.e., coverage shall include use with permission, express or implied. *Hawley v. Indemnity Ins. Co. of North America*, 257 N.C. 381, 126 S.E.2d 161 (1962).

**The statutory requirement for automatic insurance for thirty days** for a motor vehicle acquired by an "operator" is as much a part of the policy as if expressly written therein. *Lofquist v. Allstate Ins. Co.*, 263 N.C. 615, 140 S.E.2d 12 (1965).

If the policy was an owner's policy, defendant was not required to provide automatic insurance for a newly acquired mo-

tor vehicle. *Lofquist v. Allstate Ins. Co.*, 263 N.C. 615, 140 S.E.2d 12 (1965).

**Injuries Intentionally Inflicted Are Covered.**—Injuries intentionally inflicted by the use of an automobile are within the coverage of a motor vehicle liability policy as defined by this section. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**As Victim's Rights Are Not Derived through Insured.**—The victim's rights against the insurer are not derived through the insured as in the case of voluntary insurance, but are statutory and become absolute, under subsection (f) (1), of this section on the occurrence of an injury covered by the policy. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

The purpose of compulsory liability insurance is not, like that of ordinary insurance, to save harmless the tort-feasor himself; therefore, there is no reason why the victim's right to recover from the insurance carrier should depend upon whether the conduct of its insured was intentional or negligent. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**"Accident."**—The word "accident" as used in this section with reference to compulsory insurance is used in the popular sense and means any unfortunate occurrence causing injury for which the insured is liable. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**"Permission" is something apart from a general state of mind.** *Underwood v. National Grange Mut. Liab. Co.*, 258 N.C. 211, 128 S.E.2d 577 (1962).

**Express Permission.**—Where express permission to use the insured vehicle is relied upon it must be on an affirmative character, directly and distinctly stated, clear and outspoken, and not merely implied or left to inference. *Hawley v. Indemnity Ins. Co. of North America*, 257 N.C. 381, 126 S.E.2d 161 (1962).

**Implied permission** to use the insured vehicle involves an inference arising from a course of conduct or relationship between the parties, in which there is mutual acquiescence or lack of objection under circumstances signifying assent. *Hawley v. Indemnity Ins. Co. of North America*, 257 N.C. 381, 126 S.E.2d 161 (1962).

**A general or comprehensive permission** is much more readily to be assumed where the use of the insured motor vehicle is for social or nonbusiness purposes than where the relationship of master and servant ex-

ists and the usage of the vehicle is for business purposes. *Hawley v. Indemnity Ins. Co. of North America*, 257 N.C. 381, 126 S.E.2d 161 (1962).

It does not seem reasonable to assume that parties to an insurance contract covering a vehicle used in business contemplate an indiscriminate use for the social and separate business purpose of employees of named insured unless permission, express or implied, is given for such additional uses. *Hawley v. Indemnity Ins. Co. of North America*, 257 N.C. 381, 126 S.E.2d 161 (1962).

**Who May Grant Permission.**—In order to grant permission, as the word "permission" is used in the omnibus clause of a policy, there must be such ownership or control of the automobile as to confer the legal right to give or withhold assent. *Underwood v. National Grange Mut. Liab. Co.*, 258 N.C. 211, 128 S.E.2d 577 (1962).

Compliance with the requirements of this section necessitates coverage of all who use the insured vehicle with the permission, express or implied, of the named insured. Whether the permission be expressly granted or impliedly conferred, it must originate in the language or the conduct of the named insured or of someone having authority to bind him or it in that respect. *Hawley v. Indemnity Ins. Co. of North America*, 257 N.C. 381, 126 S.E.2d 161 (1962).

**Plaintiff Has Burden of Showing Permission.**—Plaintiff has the burden of showing that there was permission to use the vehicle. *Hawley v. Indemnity Ins. Co. of North America*, 257 N.C. 381, 126 S.E.2d 161 (1962).

**Violation of Permission by Carrying Guests in Vehicle.**—Where the violation of permission consists merely of carrying guests in the vehicle, and the employee's use of the vehicle is otherwise permitted, the fact alone that the employee permitted riders on the vehicle will not serve to annul the permission of the employer so as to take the employee out of the protection of the omnibus clause. *Hawley v. Indemnity Ins. Co. of North America*, 257 N.C. 381, 126 S.E.2d 161 (1962).

**Use Held without Permission.**—Where a prospective purchaser was permitted to drive a dealer's vehicle seven miles to the purchaser's home to show it to his wife and was to return the vehicle within two and one-half hours, but he actually drove seventy miles to another municipality and had an accident resulting in plaintiff's injury more than twenty hours after he should have returned the vehicle, the court held the purchaser's use at time of accident

was without permission of owner. *Fehl v. Aetna Cas. & Sur. Co.*, 260 N.C. 440, 133 S.E.2d 68 (1963).

**Policy Covering Only One of Two Vehicles Owned by Insured.**—For a case applying the Motor Vehicle Safety and Financial Responsibility Act of 1947, where an insurance company issued an owner's policy of liability insurance upon an assigned risk covering only one of the two vehicles owned by insured, and the insurer was held not liable for damages caused during insured's operation of the other vehicle owned by him, see *Graham v. Iowa Nat'l Mut. Ins. Co.*, 240 N.C. 458, 82 S.E.2d 381 (1954).

**Transfer of Title to Vehicle.**—The Responsibility Act makes no requirement that insurance, in case of transfer of title, follow the vehicle. *Underwood v. National Grange Mut. Liab. Co.*, 258 N.C. 211, 128 S.E.2d 577 (1962).

If the named insured has sold the vehicle, its subsequent use by the buyer is by virtue of the latter's ownership and his right to control it and not by virtue of the permission of the named insured seller. *Underwood v. National Grange Mut. Liab. Co.*, 258 N.C. 211, 128 S.E.2d 577 (1962).

**Settlement of Claims by Insurer.**—This section, which contains a provision expressly authorizing insurance companies to make settlement with claimants, is not any indication that prior to that date liability insurers were prohibited from settling with some of several claimants for the protection of their insured. *Alford v. Textile Ins. Co.*, 248 N.C. 224, 103 S.E.2d 8 (1958).

A provision in a liability policy that insurer might negotiate and settle any claim or suit was not proscribed or rendered void under repealed § 20-227 as it stood in 1947. *Alford v. Textile Ins. Co.*, 248 N.C. 224, 103 S.E.2d 8 (1958).

A liability insurance carrier may settle part of multiple claims arising from the negligence of its insured, even though such settlements result in preference by exhausting the fund to which an injured party whose claim has not been settled might otherwise look for payment, provided the insurer acts in good faith and not arbitrarily, and the burden is upon a claimant whose claim is not paid in full because of prior payment made by insurer in settlements of other claims, to allege and prove bad faith on the part of the insurer. *Alford v. Textile Ins. Co.*, 248 N.C. 224, 103 S.E.2d 8 (1958), decided under repealed § 20-227.

Where an insurance carrier makes a settlement in good faith, such settlement is

binding on the insured as between him and the insurer, but such settlement is not binding as between the insured and a third party where the settlement was made without the knowledge or consent of the insured or over his protest, unless the insured in the meantime has ratified such settlement. *Bradford v. Kelly*, 260 N.C. 382, 132 S.E.2d 886 (1963).

A payment by insurer in settlement of the claim of one motorist against insured motorist, solely for the purpose of terminating the liability of insurer and reserving the insured motorist's rights, does not preclude the insured motorist from thereafter maintaining an action against the other. *Gamble v. Stutts*, 262 N.C. 276, 136 S.E.2d 688 (1964).

**Action by Insured against Other Motorist after Settlement.** — See *Bradford v. Kelly*, 260 N.C. 382, 132 S.E.2d 886 (1963).

**Where a liability insurer denies liability** for a claim asserted against the insured and unjustifiably refuses to defend an action therefor, the insured is released from a provision of the policy against settlement of claims without the insurer's consent, and from a provision making the liability of the insurer dependent on the obtaining of a judgment against the insured; and that under such circumstances, the insured may make a reasonable compromise or settlement in good faith without losing his right to recover on the policy. *Nixon v. Liberty Mut. Ins. Co.*, 255 N.C. 106, 120 S.E.2d 430 (1961).

If insured in a liability policy gives timely notice of a suit against him within the coverage of the liability policy, and insurer refuses to defend such suit, insured is entitled to recover of insurer the amount he is reasonably required to spend by virtue of the failure of insurer to defend the suit. *Harris v. Nationwide Mut. Ins. Co.*, 261 N.C. 499, 135 S.E.2d 209 (1964).

**Cause of Action Arises at Time of Collision.**—The provisions of subsection (f) (1) of this section support the statement of law that any cause of action which a plaintiff may acquire against defendant as a result of a collision arises at the time of the collision, and any right which he may claim against defendant under the laws of this State and under the uninsured motorists insurance coverage of the policy must be determined by the facts existing at the time of the collision. *Hardin v. American Mut. Fire Ins. Co.*, 261 N.C. 67, 134 S.E.2d 142 (1964).

**When Liability of Insurer Becomes Absolute.**—Under this section insurer's liability (within the limits of the compulsory



coverage) for the payment of the damages for which insured was "legally obligated" became absolute when the injured party's car was damaged, at which time the policy issued by insurer to insured was in full force and effect. *Lane v. Iowa Mut. Ins. Co.*, 258 N.C. 318, 128 S.E.2d 398 (1962).

**Counterclaim against Insured under Subsection (k).**—In insured's action against insurer to recover for sums expended in defending a suit against insured within the coverage of the policy, insured's allegations of the payment of a sum to insurer's agent under agreement for the issuance of a binder do not relate to liability imposed by the Financial Responsibility Act, and therefore furnish no basis for a counterclaim against insured under subsection (k) of this section. *Harris v. Nationwide Mut. Ins. Co.*, 261 N.C. 499, 135 S.E.2d 209 (1964).

**§ 20-279.22. Notice of cancellation or termination of certified policy.**—When an insurance carrier has certified a motor vehicle liability policy under § 20-279.19 or a policy under § 20-279.20, the insurance so certified shall not be cancelled or terminated until at least twenty (20) days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the Commissioner, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates. (1953, c. 1300, s. 22.)

This section has no application to policies issued under the Vehicle Financial Responsibility Act of 1957. *Faizan v. Grain*

**For other decisions under former statute,** see *Howell v. Travelers Indem. Co.*, 237 N.C. 227, 74 S.E.2d 610 (1953); *Russell v. Lumbermen's Mut. Cas. Co.*, 237 N.C. 220, 74 S.E.2d 615 (1953); *Sanders v. Chavis*, 243 N.C. 380, 90 S.E.2d 749 (1956); *Sanders v. Travelers Indem. Co.*, 144 F. Supp. 742 (M.D.N.C. 1956); *Lynn v. Farm Bureau Mut. Auto. Ins. Co.*, 264 F.2d 921 (4th Cir. 1959).

**Applied in** *Daniels v. Nationwide Mut. Ins. Co.*, 258 N.C. 660, 129 S.E.2d 314 (1963).

**Quoted in** *Fidelity & Cas. Co. v. Jackson*, 297 F.2d 230 (4th Cir. 1961).

**Cited in** *Taylor v. Green*, 242 N.C. 156, 87 S.E.2d 11 (1955); *Muncie v. Travelers Ins. Co.*, 253 N.C. 74, 116 S.E.2d 474 (1960); *Faizan v. Grain Dealers Mut. Ins. Co.*, 254 N.C. 47, 118 S.E.2d 303 (1961).

*Dealers Mut. Ins. Co.*, 254 N.C. 47, 118 S.E.2d 303 (1961).

**§ 20-279.23. Article not to affect other policies.**—(a) This article shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this article, may be certified as proof of financial responsibility under this article.

(b) This article shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured. (1953, c. 1300, s. 23.)

**§ 20-279.24. Bond as proof.**—(a) Proof of financial responsibility may be furnished by filing with the Commissioner the bond of a surety company duly authorized to transact business in the State or a bond with at least two individual sureties each owning real estate within this State, and together having equities in such real estate over and above any encumbrances thereon equal in value to at least twice the amount of such bond, which real estate shall be scheduled in the bond which shall be approved by the clerk of the superior court of the county wherein the real estate is situated. Such bond shall be conditioned for payments in amounts and under the same circumstances as would be required in a motor vehicle liability policy, and shall not be cancellable except after twenty (20) days' written notice to the Commissioner. A certificate of the county tax supervisor or person performing the duties of the tax supervisor, showing the assessed valuation of each tract or parcel of real estate for tax purposes shall

accompany a bond with individual sureties and, upon acceptance and approval by the Commissioner, the execution of such bond shall be proved before the clerk of the superior court of the county or counties wherein the land or any part thereof lies, and such bond shall be recorded in the office of the register of deeds of such county or counties. Such bond shall constitute a lien upon the real estate therein described from and after filing for recordation to the same extent as in the case of ordinary mortgages and shall be regarded as the equivalent of a mortgage or deed of trust. In the event of default in the terms of the bond the Commissioner may foreclose the lien thereof by making public sale upon publishing notice thereof as provided by subsection (b) of § 45-21.17 of the General Statutes: provided, that any such sale shall be subject to the provisions for upset or increased bids and resales and the procedure therefor as set out in part 2 of article 2A of chapter 45 of the General Statutes. The proceeds of such sale shall be applied by the Commissioner toward the discharge of liability upon the bond, any excess to be paid over to the surety whose property was sold. The Commissioner shall have power to so sell as much of the property of either or both sureties described in the bond as shall be deemed necessary to discharge the liability under the bond, and shall not be required to apportion or prorate the liability as between sureties.

If any surety is a married person, his or her spouse shall be required to execute the bond, but only for the purpose of releasing any dower or curtesy interest in the property described in the bond, and the signing of such bond shall constitute a conveyance of dower or curtesy interest, as well as the homestead exemption of the surety, for the purpose of the bond, and the execution of the bond shall be duly acknowledged as in the case of deeds of conveyance. The Commissioner may require a certificate of title of a duly licensed attorney which shall show all liens and encumbrances with respect to each parcel of real estate described in the bond and, if any parcel of such real estate has buildings or other improvements thereon, the Commissioner may, in his discretion, require the filing with him of a policy or policies of fire and other hazard insurance, with loss clauses payable to the Commissioner as his interest may appear. All costs and expenses in connection with furnishing such bond and the registration thereof, and the certificate of title, insurance and other necessary items of expense shall be borne by the principal obligor under the bond, except that the costs of foreclosure may be paid from the proceeds of sale.

(b) If such a judgment, rendered against the principal on such bond shall not be satisfied within sixty (60) days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the State against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond. (1953, c. 1300, s. 24.)

**§ 20-279.25. Money or securities as proof.**—(a) Proof of financial responsibility may be evidenced by the certificate of the State Treasurer that the person named therein has deposited with him fifteen thousand dollars (\$15,000.00) in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of fifteen thousand dollars (\$15,000.00). The State Treasurer shall not accept any such deposit and issue a certificate therefor and the Commissioner shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(b) Such deposit shall be held by the State Treasurer to satisfy, in accordance with the provisions of this article, any execution on a judgment issued against such person making the deposit for damages, including damages for care and loss of services because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle



after such deposit was made. Money or securities so deposited shall not be subject to attachment, garnishment, or execution unless such attachment, garnishment, or execution shall arise out of a suit for damages as aforesaid. (1953, c. 1300, s. 25; 1965, c. 358, s. 1.)

**Editor's Note.** — The 1965 amendment increased the amount in the first sentence of subsection (a) from \$11,000 to \$15,000. Section 3 of the act provides that it shall apply only to policies written or renewed after its effective date.

**§ 20-279.26. Owner may give proof for others.**—Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the Commissioner shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The Commissioner shall designate the restrictions imposed by this section on the face of such person's license. (1953, c. 1300, s. 26.)

**§ 20-279.27. Substitution of proof.**—The Commissioner shall consent to the cancellation of any bond or certificate of insurance or the Commissioner shall direct and the State Treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this article. (1953, c. 1300, s. 27.)

**§ 20-279.28. Other proof may be required.**—Whenever any proof of financial responsibility filed under the provisions of this article no longer fulfills the purposes for which required, the Commissioner shall for the purpose of this article, require other proof as required by this article, or whenever it appears that proof filed to cover any motor vehicle owned by a person does not cover all motor vehicles registered in the name of such person, the Commissioner shall require proof covering all such motor vehicles. The Commissioner shall suspend the license or the nonresident's operating privilege pending the filing of such other proof. (1953, c. 1300, s. 28.)

**§ 20-279.29. Duration of proof; when proof may be cancelled or returned.**—The Commissioner shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the Commissioner shall direct and the State Treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this article as proof of financial responsibility, or the Commissioner shall waive the requirement of filing proof, in any of the following events:

- (1) At any time after two (2) years from the date such proof was required when, during the two-year period preceding the request, the Commissioner has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration or nonresident's operating privilege of the person by or for whom such proof was furnished, or
- (2) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or
- (3) In the event the person who has given proof surrenders his license to the Commissioner.

**Provided, however,** that the Commissioner shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied or in the event the person who has filed such bond or deposited such money or securities, has, within one year immediately preceding such request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or prop-



erty of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the Commissioner.

Whenever any person whose proof has been cancelled or returned under subdivision (3) of this section applies for a license within a period of two years from the date proof was originally required any such application shall be refused unless the applicant shall re-establish such proof for the remainder of such two-year period. (1953, c. 1300, s. 29. )

**§ 20-279.30. Surrender of license.** — Any person whose license shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this article, shall have been cancelled or terminated, or who shall neglect to furnish other proof upon request of the Commissioner shall immediately return his license to the Commissioner. If any person shall fail to return to the Commissioner the license as provided herein, the Commissioner shall forthwith direct any peace officer to secure possession thereof and to return the same to the Commissioner. (1953, c. 1300, s. 30.)

**§ 20-279.31. Other violations; penalties.** — (a) Failure to report an accident as required in § 20-279.4 shall be punished by a fine not in excess of twenty-five dollars (\$25.00) and in the event of injury or damage to the person or property of another in such accident, the Commissioner shall suspend the license of the person failing to make such report, or the nonresident's operating privilege of such person, until such report has been filed and for such further period not to exceed thirty (30) days as the Commissioner may fix.

(b) Any person who gives information required in a report or otherwise as provided for in § 20-279.4 knowing or having reason to believe that such information is false, or who shall forge or, without authority, sign any evidence of proof of financial responsibility, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one year, or both.

(c) Any person wilfully failing to return license as required in § 20-279.30 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not to exceed thirty (30) days, or both.

(d) Any person who shall violate any provision of this article for which no penalty is otherwise provided shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than ninety (90) days, or both. (1953, c. 1300, s. 31.)

*Cited in Lane v. Iowa Mut. Ins. Co.,*  
258 N.C. 318, 128 S.E.2d 398 (1962).

**§ 20-279.32. Exceptions.** — This article, except its provisions as to the filing of proof of financial responsibility by a common carrier and its drivers and chauffeurs, does not apply to any vehicle operated under a permit or certificate of convenience or necessity issued by the North Carolina Utilities Commission, or by the Interstate Commerce Commission, if public liability and property damage insurance for the protection of the public is required to be carried upon it. This article does not apply to any motor vehicle owned by the State of North Carolina, nor does it apply to the operator of a vehicle owned by the State of North Carolina who becomes involved in an accident while operating the state-owned vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the State. This article does not apply to the operator of a vehicle owned by a political subdivision of the State of North Carolina who becomes involved in an accident while operating such vehicle if

the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the subdivision providing that the Commissioner finds that the political subdivision has waived any immunity it has with respect to such accidents and has in force an insurance policy or other method of satisfying claims which may arise out of the accident. This article does not apply to any motor vehicle owned by the federal government, nor does it apply to the operator of a motor vehicle owned by the federal government who becomes involved in an accident while operating the government-owned vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the federal government. (1953, c. 1300, s. 32; 1955, c. 1152, s. 19.)

**§ 20-279.32a. Exception of school bus drivers.** — The provisions of this article shall not apply to school bus drivers with respect to accidents or collisions in which they are involved while operating school busses in the course of their employment. (1955, c. 1282.)

**§ 20-279.33. Self-insurers.** — (a) Any person in whose name more than twenty-five (25) motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Commissioner as provided in subsection (b) of this section. For the purpose of this article, the State of North Carolina shall be considered a self-insurer.

(b) The Commissioner may, in his discretion, upon the application of such a person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(c) Upon not less than five (5) days' notice and a hearing pursuant to such notice, the Commissioner may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance. (1953, c. 1300, s. 33.)

**§ 20-279.34. Assigned risk plans.**—The Commissioner of Insurance, after consultation with representatives of the insurance carriers licensed to write motor vehicle liability insurance in this State, shall consider such reasonable plans and procedures as such insurance carriers may submit to him for the equitable apportionment among such insurance carriers of those applicants for motor vehicle liability policies who are required to file proof of financial responsibility under this article but who are unable to secure such insurance through ordinary methods.

Upon the approval by the Commissioner of Insurance of any such plans and procedures thus submitted, all insurance carriers licensed to write motor vehicle liability insurance in this State, as a prerequisite to further engaging in writing such insurance in this State, shall formally subscribe to, and participate in, such plans and procedures so submitted.

In the event the Commissioner of Insurance, in the exercise of his discretion, does not approve any plan so submitted, or should no such plan be submitted, then the Commissioner of Insurance shall formulate and put into effect reasonable plans and procedures for the apportionment among such insurance carriers of all such applications for motor vehicle liability insurance submitted to him in accordance with the provisions of this article by persons entitled to coverage under this article but unable to obtain such coverage through ordinary methods.

Should no such plan be submitted by the insurance carriers and approved by the Commissioner of Insurance, then as a prerequisite to further engaging in the selling of motor vehicle liability insurance in this State, every insurance carrier licensed to write motor vehicle liability in this State shall formally subscribe



to and participate in the plans and procedures formulated by the Commissioner of Insurance as provided in this section, and every such insurance carrier shall accept any and all risks assigned to it by the Commissioner of Insurance under such plan and shall upon payment of a proper premium issue a policy covering the same, such policy to meet at least the minimum requirements for establishing financial responsibility as provided in this article.

Every person required to file proof of financial responsibility under the provisions of this article who has been unable to obtain a motor vehicle liability insurance policy through ordinary methods shall have the right to apply to the Commissioner of Insurance to have his risk assigned to an insurance carrier licensed to write, and writing motor vehicle liability insurance in this State, and the insurance carrier shall issue a motor vehicle liability policy which will meet at least the minimum requirements for establishing financial responsibility, as provided for in this article. In each instance where application is made to the Commissioner of Insurance to have a risk assigned to an insurance carrier, it shall be deemed that the applicant has been denied the issuance of a liability insurance policy, and the Commissioner of Insurance shall, upon receipt of such application, which shall have attached thereto a statement from the Motor Vehicle Department that the suspension of the applicant's license will be no longer in effect after the date noted therein, immediately assign the risk to an insurance carrier, which carrier shall be required, as a prerequisite to the further engaging in selling motor vehicle liability insurance in this State, to issue a motor vehicle liability policy which will meet at least the minimum requirements for establishing financial responsibility, as provided for in this article. Provided, the applicant may request in his application to the Commissioner of Insurance that he desires to obtain a motor vehicle liability policy in excess of the minimum requirements for establishing financial responsibility. Upon receipt of such application, from a person entitled to coverage under this article, the Commissioner of Insurance shall assign the applicant to an insurance carrier as provided in this article, and such carrier shall be required to issue the policy in an amount not to exceed ten thousand dollars (\$10,000.00) because of bodily injury or death of one person in any one accident, and, subject to said limit for one person, in an amount not to exceed twenty thousand dollars (\$20,000.00) because of bodily injury to or death of two or more persons in any one accident and in an amount not to exceed five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident.

The Commissioner of Insurance shall have the authority to make reasonable rules and regulations for the assignment of risks to insurance carriers.

The Commissioner of Insurance shall establish, or cause to be established, such rate classifications, rating schedules, rates, rules and regulations to be used by insurance carriers issuing assigned risk motor vehicle liability policies in accordance with this article as appear to him to be proper; provided the Commissioner of Insurance is authorized but not required to establish rates for assigned risk liability policies which are higher than approved manual rates; and in the case of assigned risk policies issued in excess of the minimum limits the Commissioner may establish higher rates or a surcharge adequate to cover the costs of underwriting such excess limits.

In the establishment of rate classification, rating schedules, rates, rules and regulations, the Commissioner of Insurance shall be guided by such principles and practices as have been established under his statutory authority to regulate motor vehicle liability insurance rates, and he may act in conformity with his statutory discretionary authority in such matters, and may in his discretion assign to the North Carolina automobile rate administrative office, or other State bureau or agency any of the administrative duties imposed upon him by this article.

The Commissioner of Insurance is empowered, if in his judgment he deems



such action to be justified after reviewing all information pertaining to the applicant or policyholder available from his records, the records of the Department of Motor Vehicles, or from other sources:

- (1) To refuse to assign an application.
- (2) To approve the rejection of an application by an insurance carrier.
- (3) To approve the cancellation of a motor vehicle liability policy by an insurance carrier; or
- (4) To refuse to approve the renewal or the reassignment of an expiring policy.

The power granted the Commissioner of Insurance under the provisions of this article to deny, directly or indirectly, insurance to any person applying for insurance hereunder, shall be restricted to persons whose licenses have been suspended and continue to be suspended by the Department of Motor Vehicles under authority of § 20-16 of the General Statutes or otherwise and the power of the Commissioner of Insurance to approve the revocation or cancellation of insurance under the provisions of this article shall be exercised only in the event of nonpayment of premium or when the Department of Motor Vehicles suspends the license of the insured under the authority granted to it under the Motor Vehicles Act.

The Commissioner of Insurance shall not be held liable for any act, or omission, in connection with the administration of the duties imposed upon him by the provisions of this article, except upon proof of actual malfeasance.

The provisions of this article relevant to assignment of risks shall be available to nonresidents who are unable to obtain a motor vehicle liability insurance policy with respect only to motor vehicles registered and used in this State. (1953, c. 1300, s. 34; 1963, c. 1208, ss. 1, 2.)

**Editor's Note.** — The 1963 amendment added the proviso and the last sentence of the fifth paragraph. It also added the proviso to the seventh paragraph.

**Section Restricts Right to Cancel.**—The right of an insurer to cancel policies issued under the assigned risk plan is restricted by this section. *Griffin v. Hartford Acc. & Indem. Co.*, 264 N.C. 212, 141 S.E.2d 300 (1965).

Cited in *Swain v. Nationwide Mut. Ins.*

*Co.*, 253 N.C. 120, 116 S.E.2d 482 (1960); *Faizan v. Grain Dealers Mut. Ins. Co.*, 254 N.C. 47, 118 S.E.2d 303 (1961); *Nixon v. Liberty Mut. Ins. Co.*, 258 N.C. 41, 127 S.E.2d 892 (1962); *Underwood v. National Grange Mut. Liab. Co.*, 258 N.C. 211, 128 S.E.2d 577 (1962); *Lane v. Iowa Mut. Ins. Co.*, 258 N.C. 318, 128 S.E.2d 398 (1962); *Daniels v. Nationwide Mut. Ins. Co.*, 258 N.C. 660, 129 S.E.2d 314 (1963).

**§ 20-279.35. Supplemental to motor vehicle laws; repeal of laws in conflict.**—This article shall in no respect be considered as a repeal of any of the motor vehicle laws of this State but shall be construed as supplemental thereto.

The "Motor Vehicle Safety and Responsibility Act" enacted by the 1947 Session of the General Assembly, being chapter 1006 of the Session Laws of 1947 (G.S. 20-224 to 20-279), is hereby repealed except with respect to any accident or violation of the motor vehicle laws of this State occurring prior to January 1, 1954, or with respect to any judgment arising from such accident or violation, and as to such accidents, violations or judgments chapter 1006 of the Session Laws of 1947 shall remain in full force and effect. Except as herein stated, all laws and clauses of laws in conflict with this article are hereby repealed. (1953, c. 1300, s. 35.)

**Applied in** *Miller v. New Amsterdam Cas. Co.*, 245 N.C. 526, 96 S.E.2d 860 (1957).

**Cited in** *Graham v. Iowa Nat. Mut. Ins. Co.*, 240 N.C. 458, 82 S.E.2d 381 (1954).

**Quoted in** *Swain v. Nationwide Mut. Ins. Co.*, 253 N.C. 120, 116 S.E.2d 482 (1960).

§ 20-279.36. **Past application of article.**—This article shall not apply with respect to any accident, or judgment arising therefrom, or violation of the motor vehicle laws of this State, occurring prior to January 1, 1954. (1953, c. 1300, s. 37.)

Applied in *Justice v. Scheidt*, 252 N.C. Ins. Co., 253 N.C. 120, 116 S.E.2d 482 361, 113 S.E.2d 709 (1960). (1960).

Quoted in *Swain v. Nationwide Mut.*

§ 20-279.37. **Article not to prevent other process.**—Nothing in this article shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law. (1953, c. 1300, s. 38.)

§ 20-279.38. **Uniformity of interpretation.**—This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it. (1953, c. 1300, s. 39.)

§ 20-279.39. **Title of article.**—This article may be cited as the “Motor Vehicle Safety-Responsibility Act of 1953.” (1953, c. 1300, s. 41.)

#### ARTICLE 10.

##### *Financial Responsibility of Taxicab Operators.*

§ 20-280. **Filing proof of financial responsibility with governing board of municipality or county.**—(a) Within 30 days after March 27, 1951, every person, firm or corporation engaging in the business of operating a taxicab or taxicabs within a municipality shall file with the governing board of the municipality in which such business is operated proof of financial responsibility as hereinafter defined.

No governing board of a municipality shall hereafter issue any certificate of convenience and necessity, franchise, license, permit or other privilege or authority to any person, firm or corporation authorizing such person, firm or corporation to engage in the business of operating a taxicab or taxicabs within the municipality unless such person, firm or corporation first files with said governing board proof of financial responsibility as hereinafter defined.

Within thirty days after the ratification of this section, every person, firm or corporation engaging in the business of operating a taxicab or taxicabs without the corporate limits of a municipality or municipalities, shall file with the board of county commissioners of the county in which such business is operated proof of financial responsibility as hereinafter defined.

No person, firm or corporation shall hereafter engage in the business of operating a taxicab or taxicabs without the corporate limits of a municipality or municipalities in any county unless such person, firm or corporation first files with the board of county commissioners of the county in which such business is operated proof of financial responsibility as hereinafter defined.

(b) As used in this section proof of financial responsibility shall mean a certificate of any insurance carrier duly authorized to do business in the State of North Carolina certifying that there is in effect a policy of liability insurance insuring the owner and operator of the taxicab business, his agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident and arising out of the ownership, use or operation of such taxicab or taxicabs, subject to limits (exclusive of interests and costs) with respect to each such motor vehicle as follows: Five thousand dollars (\$5,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, ten thousand dollars (\$10,000.00) because of bodily injury to or death of two or more persons in any one accident, and five

thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident.

(c) Every person, firm or corporation who engages in the taxicab business and who is a member of or participates in any trust fund or sinking fund, which said trust fund or sinking fund is for the sole purpose of paying claims, damages or judgments against persons, firms or corporations engaging in the taxicab business and which trust fund or sinking fund is approved by the governing body of any city or municipality with a population of over 50,000, shall be deemed a compliance with the financial responsibility provisions of this section.

Provided, however, that in the case of operators of 15 or more taxicabs, the limits (exclusive of interests and costs), with respect to each such motor vehicle shall be as follows: Ten thousand dollars (\$10,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, twenty thousand dollars (\$20,000.00) because of bodily injury to or death of two or more persons in any one accident, and one thousand dollars (\$1,000.00) because of injury to or destruction of property of others in any one accident. (1951, c. 406; 1965, c. 350, s. 1.)

**Local Modification.**—Durham: 1953, c. 597.

**Cross Reference.**—As to power of municipality to require insurance or surety bond of vehicles operated for hire in city, see also § 160-200, subdivision (35).

**Editor's Note.**—The 1965 amendment increased the last amount mentioned in sub-

section (b) from \$1,000 to \$5,000. Section 3 of the act provides that it shall apply only to policies written or renewed after its effective date.

For brief comment on this section, see 29 N.C.L. Rev. 402.

Cited in *Perrell v. Beaty Serv. Co.*, 248 N.C. 153, 102 S.E.2d 785 (1958).

## ARTICLE 11.

### *Liability Insurance Required of Persons Engaged in Renting Motor Vehicles.*

**§ 20-281. Liability insurance prerequisite to engaging in business; coverage of policy.**—From and after July 1, 1953, it shall be unlawful for any person, firm or corporation to engage in the business of renting or leasing motor vehicles to the public for operation by the rentee or lessee unless such person, firm or corporation has secured insurance for his own liability and that of his rentee or lessee, in such an amount as is hereinafter provided, from an insurance company duly licensed to sell motor vehicle liability insurance in this State. Each such motor vehicle leased or rented must be covered by a policy of liability insurance insuring the owner and rentee or lessee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such motor vehicle, subject to the following minimum limits: Five thousand dollars (\$5,000.00) because of bodily injury to or death of one person in any one accident, and ten thousand dollars (\$10,000.00) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident. Provided, however, that nothing in this article shall prevent such operators from qualifying as self-insurers under terms and conditions to be prepared and prescribed by the Commissioner of Motor Vehicles or by giving bond with personal or corporate surety, as now provided by G.S. 20-279.24, in lieu of securing the insurance policy hereinbefore provided for. (1953, c. 1017, s. 1; 1955, c. 1296; 1965, c. 349, s. 1.)

**Cross Reference.** — As to registration fees for U-Drive-It passenger vehicles, see § 20-87 (b).

**Editor's Note.**—The 1965 amendment increased the last amount mentioned in the

section from \$1,000 to \$5,000. Section 3 of the act provides that it shall apply only to policies written or renewed after its effective date.



§ 20-282. **Co-operation in enforcement of article.**—The provisions of this article shall be enforced by the Commissioner of Motor Vehicles in co-operation with the Commissioner of Insurance, the North Carolina Automobile Rate Administrative Office and with all law enforcement officers and agents and other agencies of the State and the political subdivisions thereof. (1953, c. 1017, s. 2.)

§ 20-283. **Compliance with article prerequisite to issuance of license plates.**—No license plates shall be issued by the Department of Motor Vehicles to operate a motor vehicle, for lease or rent for operation by the rentee or lessee, until the applicant for such license plates demonstrates to the Commissioner of Motor Vehicles that he has complied with the provisions of this article. (1953 c. 1017, s. 3.)

§ 20-284. **Violation a misdemeanor.**—Any person, firm or corporation violating the provisions of this article shall be guilty of a misdemeanor and shall be punished by fine or imprisonment, or both, in the discretion of the court. (1953, c. 1017, s. 4.)

#### ARTICLE 12.

##### *Motor Vehicle Dealers and Manufacturers Licensing Law.*

§ 20-285. **Distribution of motor vehicles affected with a public interest.**—The General Assembly finds and declares that the distribution of motor vehicles in the State of North Carolina vitally affects the general economy of the State and the public interest and public welfare, and in the exercise of its police power, it is necessary to regulate and license motor vehicle manufacturers, distributors, dealers, salesmen, and their representatives doing business in North Carolina, in order to prevent frauds, impositions and other abuses upon its citizens. (1955, c. 1243, s. 1.)

§ 20-286. **Definitions.** — Unless the context otherwise requires, the following words and terms for the purpose of this article, shall have the following meanings:

- (1) "Commissioner" means Commissioner of Motor Vehicles.
- (2) "Department" means Department of Motor Vehicles.
- (3) "Distributor" and "wholesaler" mean a person, resident or nonresident of this State, who sells or distributes motor vehicles to motor vehicle dealers in this State, or who maintains a distributor representative in this State.
- (4) "Distributor branch" means a branch office maintained by a distributor or wholesaler, for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising its representatives in this State.
- (5) "Distributor representative" means a person employed by a distributor or wholesaler, or by a distributor branch, for the purpose of making or promoting the sale of motor vehicles dealt in by it, or for supervising or contacting its dealers, prospective dealers, or representatives in this State.
- (6) "Established place of business" means a salesroom in a permanent enclosed building or structure, at which a permanent business of bartering, trading and selling of motor vehicles will be carried on as such in good faith and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business at such place, and shall not mean tents, temporary stands, or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement, devoted principally to the business of a motor vehicle dealer, as herein defined.
- (7) "Factory branch" means a branch office, maintained for the sale of motor

vehicles to motor vehicle dealers, or for directing or supervising its representatives in this State.

- (8) "Factory representative" means a person employed by a person who manufactures or assembles motor vehicles, or by a factory branch, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers, prospective dealers or representatives in this State.
- (9) "Manufacturer" means any person, firm or corporation, resident or non-resident in this State, who manufactures or assembles motor vehicles.
- (10) "Motor vehicle" means any motor propelled vehicle, trailer or semi-trailer, required to be registered under the laws of this State.
  - a. "New motor vehicle" means a motor vehicle which has never been the subject of a sale other than between new motor vehicle dealers, or between manufacture and dealer of the same franchise.
  - b. "Used motor vehicle" means a motor vehicle other than described in paragraph (10) a above.
- (11) "Motor vehicle dealer" and "dealer" mean any person, firm, association, or corporation engaged in the business of selling, soliciting, or advertising the sale of motor vehicles.

The term "motor vehicle dealer" or "dealer" does not include:

  - a. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court; or
  - b. Public officers while performing their official duties; or
  - c. Persons disposing of motor vehicles acquired for their own use and actually so used, when the same shall have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this article; or
  - d. Persons, firms or corporations who shall sell motor vehicles as an incident to their principal business but who are not engaged primarily in the selling of motor vehicles. This category includes finance companies who shall sell repossessed motor vehicles and insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance and who do not maintain a used car lot or building with one or more employed motor vehicle salesmen.
- (12) "Motor vehicle salesman" or "salesman" means any person who is employed as a salesman by, or has an agreement with, a motor vehicle dealer, to sell or exchange motor vehicles.
- (13) "New motor vehicle dealer" means a motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, new or new and used motor vehicles.
- (14) "Person" means any individual, co-partnership, firm, association, corporation, or combination of individuals of whatsoever form or character.
- (15) "Retail installment sale" means and includes every sale of one or more motor vehicles to a buyer for his use and not for resale, in which the price thereof is payable in one or more installments over a period of time and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a conditional sale, bailment lease, chattel mortgage or otherwise.
- (16) "Used motor vehicle dealer" means a motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or ex-

change of an interest in, or who is engaged, wholly or in part, in the business of selling, used motor vehicles only. (1955, c. 1243, s. 2.)

**§ 20-287. Licenses required.**—It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer, motor vehicle salesman, manufacturer, factory branch, distributor branch, factory or distributor representative, to engage in business as such in this State without first obtaining a license as provided in this article. If any motor vehicle dealer acts as a motor vehicle salesman, he shall obtain a motor vehicle salesman's license in addition to a motor vehicle dealer's license. A salesman may have only one license, and such license shall show the name of the dealer or dealers employing him. A manufacturer or a factory branch or distributor or distributor branch, licensed as such, may also operate as a motor vehicle dealer without additional license. (1955, c. 1243, s. 3.)

**§ 20-288. Application for license; information required and considered; expiration of license; supplemental license.**—(a) Application for license shall be made to the Department at such time, in such form, and contain such information as the Department shall require, and shall be accompanied by the required fee.

(b) The Department shall require in such application, or otherwise, information relating to matters set forth in § 20-294 as grounds for the refusing of licenses, and to other pertinent matter commensurate with the safeguarding of the public interest, all of which shall be considered by the Department in determining the fitness of the applicant to engage in the business for which he seeks a license.

(c) All licenses that are granted shall expire unless sooner revoked or suspended, on June 30th of the year following date of issue.

(d) Supplemental licenses shall be issued for each place of business, operated or proposed to be operated by the licensee, that is not contiguous to other premises for which a license is issued. (1955, c. 1243, s. 4.)

**§ 20-289. License fees.**—(a) The license fee for each fiscal year, or part thereof, shall be as follows:

- (1) For motor vehicle dealers, distributors, and wholesalers, fifteen dollars (\$15.00) for each principal place of business, plus five dollars (\$5.00) for a supplementary license for each car lot not immediately adjacent thereto.
- (2) For manufacturers, fifty dollars (\$50.00), and for each factory branch in this State, twenty dollars (\$20.00).
- (3) For motor vehicle salesmen, two dollars (\$2.00).
- (4) For factory representatives, or distributor branch representatives, two dollars (\$2.00).
- (5) Manufacturers, wholesalers, and distributors may operate as a motor vehicle dealer, without any additional fee or license.

(b) The fees and licenses collected under this section shall be placed in a special fund to be designated the "Dealers'-Manufacturers' License Fund" and shall be used under the direction and supervision of the assistant director of the budget for the administration of this article. Provided, that nothing contained in this section or in any other section of this article shall be construed as exempting any person of any license, tax or fee imposed by any other provision of the law. (1955, c. 1243, s. 5.)

**§ 20-290. Licenses to specify places of business; display of license and list of salesmen; advertising.**—(a) The licenses of new motor vehicle dealers, used motor vehicle dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of each place of business or branch or other location occupied or to be occupied by the licensee in conducting his business as such, and the license or supplementary license issued there-



for shall be conspicuously displayed on each of such premises. In the event any such location is changed, the Department shall endorse the change of location on the license, without charge.

(b) Each dealer shall keep a current list of his licensed salesmen, showing names, addresses, and serial numbers of their licenses, posted in a conspicuous place in each place of business.

(c) Whenever any licensee places an advertisement in any newspaper or publication, the type and serial number of license shall appear therein. (1955, c. 1243, s. 6.)

**§ 20-291. Salesman, etc., to carry license and display on request; license to name employer.**—Every salesman, factory representative and distributor representative shall carry his license when engaged in his business, and shall display the same upon request. The licensee shall name his employer, and in the event of a change of employer, he shall immediately mail his license to the Department, which shall endorse such change on the license without charge. (1955, c. 1243, s. 7.)

**§ 20-292. Use of unimproved lots and premises.**—A licensed motor vehicle dealer may use vacant lots and premises for the sale and display of motor vehicles: Provided, that if such lots and premises are not immediately adjacent to the dealer's established place of business, a supplementary license shall be obtained for each lot or premises. (1955, c. 1243, s. 8.)

**§ 20-293. Only licensed dealer entitled to dealer's registration plates.**—No motor vehicle dealer, unless licensed under this article shall be entitled to receive or use any dealer's registration plates under the provisions of the Motor Vehicle Laws of this State providing for the issuance of such plates. (1955, c. 1243, s. 9.)

**§ 20-294. Grounds for denying, suspending or revoking licenses.**—A license may be denied, suspended or revoked on any one or more of the following grounds:

- (1) Material misstatement in application for license.
- (2) Willful and intentional failure to comply with any provision of this article or any lawful rule or regulation promulgated by the Department under this article.
- (3) Being a motor vehicle dealer, failure to have an established place of business as defined in this article.
- (4) Willfully defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's business.
- (5) Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the laws of this State with respect to the retaking of motor vehicles under retail installment contracts and the redemption and resale of such motor vehicles.
- (6) Having used unfair methods of competition or unfair deceptive acts or practices.
- (7) Knowingly advertising by any means, any assertion, representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the business licensed or for which a license is sought.
- (8) Knowingly advertising a used motor vehicle for sale as a new motor vehicle.
- (9) Conviction of an offense set forth under G.S. 20-105, 20-106, 20-106.1 or 20-112 while holding such a license or within five (5) years next preceding the date of filing the application. (1955, c. 1243, s. 10; 1963, c. 1102.)

**Editor's Note.**—The 1963 amendment added subdivision (9).

**§ 20-295. Time to act upon applications; refusal of license; notice; hearing.**—The Department shall act upon all applications for a license within thirty (30) days after receipt thereof, by either granting or refusing the same. Any applicant denied a license shall, upon his written request filed within thirty (30) days, be given a hearing at such time and place as determined by the Commissioner, or person designated by him. All such hearings shall be public and shall be held with reasonable promptness. Any applicant denied a license for failure to comply with the definition of an established place of business, as defined in this article, may not, nor shall any one else apply for a license for such premises, for which a license was denied, until the expiration of sixty (60) days from the date of the rejection of such application. (1955, c. 1243, s. 11.)

**§ 20-296. Notice and hearing upon denial, suspension, revocation or refusal to renew license.**—No license shall be suspended or revoked or denied, or renewal thereof refused, until a written notice of the complaint made has been furnished to the licensee against whom the same is directed, and a hearing thereon has been had before the Commissioner, or a person designated by him. At least ten (10) days' written notice of the time and place of such hearing shall be given to the licensee by registered mail to his last known address as shown on his license or other record of information in possession of the Department. At any such hearing, the licensee shall have the right to be heard personally or by counsel. After hearing, the Department shall have power to suspend, revoke or refuse to renew the license in question. Immediate notice of any such action shall be given to the licensee in the manner herein provided in the case of notices of hearing. (1955, c. 1243, s. 12.)

**§ 20-297. Inspection of records, etc.**—The Department may inspect the pertinent books, records, letters and contracts of a licensee relating to any written complaint made to him against such licensee. (1955, c. 1243, s. 13.)

**§ 20-298. Insurance.**—It shall be unlawful for any dealer or salesman or any employee of any dealer, to coerce or offer anything of value to any purchaser of a motor vehicle to provide any type of insurance coverage on said motor vehicle. No dealer, salesman or representative of either shall accept any policy as collateral on any vehicle sold by him to secure an interest in such vehicle in any company not qualified under the insurance laws of this State: Provided, nothing in this article shall prevent a dealer or his representative from requiring adequate insurance coverage on a motor vehicle which is the subject of an installment sale. (1955, c. 1243, s. 14.)

**§ 20-299. Acts of officers, directors, partners, salesmen and other representatives.**—(a) If a licensee is a co-partnership or a corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or partner of the co-partnership or corporation has committed any act or omitted any duty which would be cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his salesmen while acting as his agent, if such licensee approved of or had knowledge of said acts or other similar acts and after such approval or knowledge retained the benefit, proceeds, profits, or advantages accruing from said acts or otherwise ratified said acts.

(b) Every licensee who is a manufacturer or a factory branch shall be responsible for the acts of any or all of its agents and representatives while acting in the conduct of said licensee's business whether or not such licensee approved, authorized, or had knowledge of such acts. (1955, c. 1243, s. 15.)

**§ 20-300. Appeals from actions of Commissioner.**—Appeals from ac-

tions of the Commissioner shall be governed by the provisions of article 33 of chapter 143 of the General Statutes. (1955, c. 1243, s. 16.)

Cited in *State ex rel. North Carolina Util. Comm'n v. Old Fort Finishing Plant*, 264 N.C. 416, 142 S.E.2d 8 (1965).

**§ 20-301. Powers of Commissioner.**—(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair methods of competition and unfair or deceptive acts or practices.

(c) The Commissioner shall have the power in hearings arising under this article to determine the place where they shall be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this article, in addition to any other remedy bring an action in the name of the State against such person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin such persons and such other persons from continuing the same. (1955, c. 1243, s. 17.)

**§ 20-302. Rules and regulations.** — The Commissioner may make such rules and regulations, not inconsistent with the provisions of this article, as he shall deem necessary or proper for the effective administration and enforcement of this article, provided that a copy of such rules and regulations shall be mailed to each motor vehicle dealer licensee thirty (30) days prior to the effective date of such rules and regulations. (1955, c. 1243, s. 18.)

**§ 20-303. Installment sales to be evidenced by written instrument; statement to be delivered to buyer.**—(a) Every retail installment sale shall be evidenced by an instrument in writing, which shall contain all the agreements of the parties and shall be signed by the buyer.

(b) Prior to or about the time of the delivery of the motor vehicle, the seller shall deliver to the buyer a written statement describing clearly the motor vehicle sold to the buyer, the cash sale price thereof, the cash paid down by the buyer, the amount credited the buyer for any trade-in and a description of the motor vehicle traded, the amount of the finance charge, the amount of any other charge specifying its purpose, the net balance due from the buyer, the terms of the payment of such net balance and a summary of any insurance protection to be effected. (1955, c. 1243, s. 19.)

**§ 20-304. Coercion of retail dealer by manufacturer or distributor in connection with installment sales contract prohibited.**—(a) It shall be unlawful for any manufacturer, wholesaler or distributor, or any officer, agent or representative of either, to coerce, or attempt to coerce, any retail motor vehicle dealer or prospective retail motor vehicle dealer in this State to sell, assign or transfer any retail installment sales contract, obtained by such dealer in connection with the sale by him in this State of motor vehicles manufactured or sold by such manufacturer, wholesaler, or distributor, to a specified finance company or class of such companies, or to any other specified persons, by any of the acts or means hereinafter set forth, namely:

- (1) By any statement, suggestion, promise or threat that such manufacturer, wholesaler, or distributor will in any manner benefit or injure such dealer, whether such statement, suggestion, threat or promise is expressed or implied, or made directly or indirectly,
- (2) By any act that will benefit or injure such dealer,
- (3) By any contract, or any expressed or implied offer of contract, made directly or indirectly to such dealer, for handling motor vehicles, on the condition that such dealer sell, assign or transfer his retail installment



sales contract thereon, in this State, to a specified finance company or class of such companies, or to any other specified person,

- (4) By any expressed or implied statement or representation, made directly or indirectly, that such dealer is under any obligation whatsoever to sell, assign or transfer any of his retail sales contracts, in this State, on motor vehicles manufactured or sold by such manufacturer, wholesaler, or distributor to such finance company, or class of companies, or other specified person, because of any relationship or affiliation between such manufacturer, wholesaler, or distributor and such finance company or companies or such other specified person or persons.

(b) Any such statements, threats, promises, acts, contracts, or offers of contracts, when the effect thereof may be to lessen or eliminate competition, or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and against the public policy of this State, are unlawful and are hereby prohibited. (1955, c. 1243, s. 20.)

**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; cancellation of franchise.**—It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

- (1) To coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer,
- (2) To coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer,
- (3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer. (1955, c. 1243, s. 21.)

**§ 20-306. Unlawful for salesman to sell except for his employer; multiple employment.**—It shall be unlawful for any motor vehicle salesman licensed under this article to sell or exchange or offer or attempt to sell or exchange any motor vehicle other than his own except for the licensed motor vehicle dealer or dealers by whom he is employed, or to offer, transfer or assign, any sale or exchange, that he may have negotiated, to any other dealer or salesman. Salesmen may be employed by more than one dealer provided such multiple employment is clearly indicated on his license. (1955, c. 1243, s. 22.)

**§ 20-307. Article applicable to existing and future franchises and contracts.**—The provisions of this article shall be applicable to all franchises and contracts existing between dealers and manufacturers, factory branches, and distributors at the time of its ratification, and to all such future franchises and contracts. (1955, c. 1243, s. 23.)

**§ 20-308. Penalties.**—Any person violating any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court. (1955, c. 1243, s. 24.)

#### ARTICLE 13.

#### *The Vehicle Financial Responsibility Act of 1957.*

**§ 20-309. Financial responsibility prerequisite to registration; must be maintained throughout registration period.**—(a) No self-propelled motor

vehicle shall be registered in this State unless the owner at the time of registration has financial responsibility for the operation of such motor vehicle, as provided in this article, and certifies that he has such financial responsibility. The owner of each motor vehicle registered in this State shall maintain financial responsibility continuously throughout the period of registration.

(b) Financial responsibility shall be a liability insurance policy or a financial security bond or a financial security deposit or by qualification as a self-insurer, as these terms are defined and described in article 9A, chapter 20 of the General Statutes of North Carolina, as amended.

(c) When it is certified that financial responsibility is a liability insurance policy, the Commissioner of Motor Vehicles may require that the owner produce records to prove the fact of such insurance, and failure to produce such records shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and the Department of Motor Vehicles shall revoke the owner's registration plate and suspend his operator's license for 30 days. In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, his spouse, or any child of the spouse or any child of such owner, within less than 30 days after the date of receipt of the registration plate and operator's license by the Department. As a condition precedent to the reregistration of the vehicle, the owner shall pay the appropriate fee for a new registration plate. It shall be the duty of insurance companies, upon request of the Department, to verify the accuracy of any owner's certification. Failure by an insurance company to deny coverage within twenty (20) days may be considered by the Commissioner as acknowledgment that the information as submitted is correct.

(d) When liability insurance with regard to any motor vehicle is terminated by cancellation or failure to renew, or the owner's financial responsibility for the operation of any motor vehicle is otherwise terminated, the owner shall forthwith surrender the registration certificate and plates of the vehicle to the Department of Motor Vehicles unless financial responsibility is maintained in some other manner in compliance with this article.

(e) No insurance policy provided in subsection (d) may be terminated by cancellation or otherwise by the insurer without having given the North Carolina Motor Vehicles Department notice of such cancellation fifteen (15) days prior to effective date of cancellation. Where the insurance policy is terminated by the insured the insurer shall immediately notify the Department of Motor Vehicles that such insurance policy has been terminated. The Department of Motor Vehicles upon receiving notice of cancellation or termination of an owner's financial responsibility as required by this article, shall notify such owner of such cancellation or termination, and such owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 15 days from date of notice given by the Department, certify to the Department that he has financial responsibility effective on or prior to the date of such cancellation or termination. Failure by the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and, unless the owner's registration plate has been forwarded to the Department of Motor Vehicles, the Department of Motor Vehicles shall revoke the owner's registration plate and suspend his operator's license for 30 days. In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, his spouse, or any child of the spouse or any child of such owner, within less than 30 days after the date of receipt of the registration plate and operator's license by the Department. As a condition precedent to the reregistration of the vehicle, the owner shall pay the appropriate fee for a new registration plate. (1957, c. 1393, s. 1; 1959, c. 1277, s. 1; 1963, c. 964, s. 1; 1965, c. 272; c. 1136, ss. 1, 2.)

**Cross References.**—As to Motor Vehicle Safety and Financial Responsibility Act of 1953, see §§ 20-279.1 to 20-279.39.

As to notice of termination of policy required to be given to Commissioner of Motor Vehicles under § 20-310 before its amendment in 1963, see note to § 20-310.

**Editor's Note.**—The 1963 amendment rewrote this section.

The first 1965 amendment added the second sentence in subsection (e).

The second 1965 amendment added the language following "concerned" at the end of the first sentence in subsection (c), added the present second and third sentences in that subsection and added the last four sentences in subsection (e). Section 5 of the second amendatory act provides that it shall be in full force and effect 60 days from and after ratification. It was ratified June 17, 1965.

For case law survey on insurance, see 41 N.C.L. Rev. 484 (1963).

**The manifest purpose of this article** is to provide protection, within the required limits, to persons injured or damaged by the negligent operation of a motor vehicle; and, in respect of a motor vehicle liability policy, to provide such protection notwithstanding violations of policy provisions by the owner subsequent to accidents on which such injured parties base their claims. To bar recovery from the insurer on account of such policy violations would practically nullify the statute by making the enforcement of the rights of the person intended to be protected dependent upon the acts of the very person who caused the injury. *Swain v. Nationwide Mut. Ins. Co.*, 253 N.C. 120, 116 S.E.2d 482 (1960).

**This Article and Article 9A Are to Be Construed in Pari Materia.**—The Motor Vehicle Safety and Financial Responsibility Act of 1953 applies to drivers whose licenses have been suspended and relates to the restoration of drivers' licenses, while the Vehicle Financial Responsibility Act of 1957 applies to all motor vehicle owners and relates to the registration of motor vehicles. The two acts are complementary and the latter does not repeal or modify the former, but incorporates portions of the former by reference, and the two acts are to be construed in *pari materia* so as to

harmonize them and give effect to both. *Faizan v. Grain Dealers Mut. Ins. Co.*, 254 N.C. 47, 118 S.E.2d 303 (1961).

This article requires every owner of a motor vehicle, as a prerequisite to the registration thereof to show proof of financial responsibility in the manner prescribed by article 9A of this chapter. *Swain v. Nationwide Mut. Ins. Co.*, 253 N.C. 120, 116 S.E.2d 482 (1960).

**Effect of Issuance of Certificate by Insurer.**—By the issuance of the certificate an insurer represents that it has issued and there is in effect an owner's motor vehicle liability policy. *Crisp v. State Farm Mut. Auto. Ins. Co.*, 256 N.C. 408, 124 S.E.2d 149 (1962).

By the issuance of the certificate the insurer represents that everything requisite for a binding insurance policy has been performed, including payment, or satisfactory arrangement for payment, of premium. Once the certificate has been issued, nonpayment of premium, nothing else appearing, is no defense in a suit by a third party beneficiary against insurer. To avoid liability insurer must allege and prove cancellation and termination of the insurance policy in accordance with the applicable statute, unless it is established by plaintiff's evidence or admissions. *Crisp v. State Farm Mut. Auto. Ins. Co.*, 256 N.C. 408, 124 S.E.2d 149 (1962).

**Policy Violations a Defense Prior to January 1, 1958.**—As to accidents occurring prior to the effective date (January 1, 1958) of this article, policy violations constitute a valid and complete defense as to the insurer. *Swain v. Nationwide Mut. Ins. Co.*, 253 N.C. 120, 116 S.E.2d 482 (1960).

**Applied in Underwood v. National Grange Mut. Liab. Co.**, 258 N.C. 211, 128 S.E.2d 577 (1962); *Lofquist v. Allstate Ins. Co.*, 263 N.C. 615, 140 S.E.2d 12 (1965).

**Stated in Griffin v. Hartford Acc. & Indem. Co.**, 264 N.C. 212, 141 S.E.2d 300 (1965).

**Cited in High Point Sav. & Trust Co. v. King**, 253 N.C. 571, 117 S.E.2d 421 (1960); *Smart Fin. Co. v. Dick*, 256 N.C. 669, 124 S.E.2d 862 (1962); *Fidelity & Cas. Co. v. Jackson*, 297 F.2d 230 (4th Cir. 1961).

**§ 20-310. Termination of insurance.**—(a) No contract of insurance or renewal thereof shall be terminated by cancellation or failure to renew by the insurer until at least fifteen (15) days after mailing a notice of termination by certificate of mailing to the named insured at the latest address filed with the insurer by or on behalf of the policyholder. The fact of the envelope containing such notice shall be prominently marked with the words "Important Insurance Notice." Time of the effective date and hour of termination stated in the notice



shall become the end of the policy period. Every such notice of termination for any cause whatsoever sent to the insured shall include on the face of the notice a statement that financial responsibility is required to be maintained continuously throughout the registration period and that operation of a motor vehicle without maintaining such financial responsibility is a misdemeanor, the penalties for which are loss of license plate and suspension of driver's license for thirty (30) days; and a fine or imprisonment in the discretion of the court.

(b) In addition, no contract of insurance which has been in effect for sixty (60) days may be terminated by cancellation by the insurer unless:

- (1) The named insured fails to discharge when due any of his obligations in connection with the payment of premium for the policy or any installment thereof;
- (2) The insured violates any of the terms and conditions of the policy not in conflict with the provisions of this subsection;
- (3) The named insured or any other operator who customarily operates an automobile insured under the policy:
  - a. Has had his driver's license suspended or revoked during the policy period, for more than thirty (30) days, or
  - b. Is convicted of or forfeits bail, during the policy period, for
    1. Any felony;
    2. Theft of a motor vehicle;
    3. A third violation, for any one operator, within a period of eighteen (18) months, of any moving traffic offense.

After the aforesaid sixty-day period, a notice of cancellation from the insurer to the insured shall give the statutory reason for which such cancellation is made. Compliance with this paragraph shall be privileged and shall not constitute grounds for any cause of action against the insurer or its representatives.

The provisions of this subsection shall not apply to policies of insurance issued under the assigned risk plan, and shall apply only to policies of insurance issued on vehicles rated as private passenger automobiles.

(c) No contract of insurance which has been in effect for sixty days shall be terminated by failure to renew by the insurer unless:

- (1) The insurer gives the named insured notice in writing, accompanying the written notice of failure to renew provided for in subsection (a) of G.S. 20-310, at least fifteen days prior to the proposed date of termination or failure to renew:
  - a. That it proposes to terminate or fail to renew the insurance contract upon such date; and
  - b. That, upon receipt of a written request from the named insured, it will forthwith mail to the named insured a written explanation of its actual reason or reasons for terminating or failing to renew; and
  - c. That the named insured, within five days after receipt of such notice, may at his option, request the insurer to furnish such written explanation; and
- (2) That, if the named insured exercises his option, the insurer shall forthwith, but, in any event, prior to the proposed termination or failure to renew, mail to the named insured a written explanation, giving the actual reason or reasons for its failure to renew the contract.

Such explanation shall be privileged, and shall not constitute grounds for any cause of action against the insurer or its representatives or any firm, person or corporation who in good faith furnishes to the insurer the information upon which the reasons are based.

The provisions of this subsection shall not apply to policies of liability insurance issued under the Assigned Risk Plan. (1957, c. 1393, s. 2; 1963, c. 842, ss. 1-3; c. 964, s. 2; 1965, c. 1135.)

**Cross Reference.**—As to notice of termination of policy required to be given by insurer to Motor Vehicles Department, see § 20-309 (e).

**Editor's Note.**—The first 1963 amendment added subsection (b). The second 1963 amendment rewrote subsection (a).

The 1965 amendment added subsection (c).

It was the intent of this article that motor vehicle owners maintain financial responsibility continuously and that the law enforce this purpose. *Crisp v. State Farm Mut. Auto. Ins. Co.*, 256 N.C. 408, 124 S.E.2d 149 (1962).

**Operation without Such Maintenance Is Crime.** — Operation of a motor vehicle without insurance or deposit for the protection of those injured as a result of its use is a crime. *Levinson v. Travelers Indem. Co.*, 258 N.C. 672, 129 S.E.2d 297 (1963).

**But Insured May Cancel Policy.**—There is nothing in the Vehicle Financial Responsibility Act which expressly or impliedly forbids the cancellation of a policy by insured through a duly authorized agent. *Daniels v. Nationwide Mut. Ins. Co.*, 258 N.C. 660, 129 S.E.2d 314 (1963).

**By Agent.**—Cancellation of the policy by the insured is not an act so personal in its nature that it cannot be delegated to an agent. *Daniels v. Nationwide Mut. Ins. Co.*, 258 N.C. 660, 129 S.E.2d 314 (1963).

This section was intended to protect insured from the acts of the insurer, not from his own intentional acts. *Levinson v. Travelers Indem. Co.*, 258 N.C. 672, 129 S.E.2d 297 (1963).

**Substantial Compliance with Section Required.**—In order to effectively cancel a policy an insurer must substantially comply with the requirements of this section. *Crisp v. State Farm Mut. Auto. Ins. Co.*, 256 N.C. 408, 124 S.E.2d 149 (1962).

**Notice of Termination of Policy.**—This article has separate, distinct and specific provisions for notice of termination of a policy issued thereunder. Thus § 20-279.22, relating to notice of termination of policies issued under article 9A of this chapter, has no application to insurance policies issued pursuant to this article. *Faizan v. Grain Dealers Mut. Ins. Co.*, 254 N.C. 47, 118 S.E.2d 303 (1961).

The notice gives insured reasonable opportunity to procure other insurance. *Levinson v. Travelers Indem. Co.*, 258 N.C. 672, 129 S.E.2d 297 (1963).

**Statement to Be Placed on Face of Notice to Insured.** — The statement required by this section to be placed on the face of the notice of termination is not merely

formal and directory. It is intended as a firm reminder to vehicle owners of the requirements of the law, and as a notice that failure to comply constitutes a criminal offense. It is to be given at the very time when insurance protection and financial responsibility is being withdrawn. *Crisp v. State Farm Mut. Auto. Ins. Co.*, 256 N.C. 408, 124 S.E.2d 149 (1962).

**Is Essential to Valid Cancellation or Termination.** — In the absence of circumstances in a civil action which might constitute a waiver or an estoppel, or render harmless the failure to include a statement that proof of financial responsibility must be maintained, it is essential to a valid cancellation or termination, especially when the suit is by a member of the class the act is designed to protect. *Crisp v. State Farm Mut. Auto. Ins. Co.*, 256 N.C. 408, 124 S.E.2d 149 (1962).

If the notice fails to conform to the statute, the contract remains in force. *Levinson v. Travelers Indem. Co.*, 258 N.C. 672, 129 S.E.2d 297 (1963).

**Insurer Not Required to Give Notice of Cancellation by Insured.**—Where there is a cancellation by insured, insurer is not required to give notice of such cancellation to the insured. *Underwood v. National Grange Mut. Liab. Co.*, 258 N.C. 211, 128 S.E.2d 577 (1962); *Daniels v. Nationwide Mut. Ins. Co.*, 258 N.C. 660, 129 S.E.2d 314 (1963).

**Notice Held Sufficient.**—Pursuant to the rules and regulations of the assigned risk plan, insurer by mail advised insured in January, 1959, that his policy would expire 22 February 1959, and that in order to renew it he must pay the premium in advance by 5 February 1959, gave the amount of premium, and stated that if premium had not been paid by 5 February, it would be assumed he did not desire coverage. It also advised that if premium was not paid by 5 February 1959, insured would have to apply through the assigned risk plan if he desired further insurance coverage. Insured did not pay the renewal premium on the date specified and did not tender the premium at any later date, but applied through the assigned risk plan for further insurance. Under these conditions, it was held that there was no failure to renew on the part of insurer and it was under no obligation to give insured further notice of termination under the provisions of this section. Therefore, the coverage period of the policy ended at 12:01 A. M., 22 February 1959. *Faizan v. Grain Dealers Mut. Ins. Co.*, 254 N.C. 47, 118 S.E.2d 303 (1961).

**Notice to Commissioner of Motor Vehicles—Former Law.** — As to notice of

termination of policy required to be given to the Commissioner of Motor Vehicles before the 1963 amendment to this section, see *Nixon v. Liberty Mut. Ins. Co.*, 258 N.C. 41, 127 S.E.2d 892 (1962); *Levinson v. Travelers Indem. Co.*, 258 N.C. 672, 129 S.E.2d 297 (1963). See now § 20-309 (e).

**Substitution of Vehicle at Insured's Request.**—Where insured requests insurer to substitute another vehicle for the vehicle insured, and insurer in compliance with the

request endorses the policy and issues form FS-1, there is no cancellation of the policy but the policy does not thereafter cover the original vehicle, and no liability can attach to insurer for any injuries inflicted in the negligent operation of the original vehicle by insured or by another with insured's permission. *Levinson v. Travelers Indem. Co.*, 258 N.C. 672, 129 S.E.2d 297 (1963).

**§ 20-310.1:** Repealed by Session Laws 1963, c. 964, s. 3.

**§ 20-311. Revocation of registration and driver's license when financial responsibility not in effect.**—The Department of Motor Vehicles, upon receipt of evidence that financial responsibility for the operation of any motor vehicle registered or required to be registered in this State is not or was not in effect at the time of operation or certification that insurance was in effect, shall revoke the registration of such vehicle and suspend the operator's and chauffeur's licenses of the owner thereof for a period of thirty (30) days. In no case shall the operator's or chauffeur's license of such owner be reinstated nor shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of such owner, his spouse or any child or spouse of any child of the owner within less than thirty (30) days after the registration plates and operator's or chauffeur's license have been surrendered to the Department. As a condition precedent to the reregistration of the vehicle the owner shall pay the appropriate fee for a new registration plate. (1957, c. 1393, s. 3; 1959, c. 1277, s. 2; 1963, c. 964, s. 4; 1965, c. 205; c. 1136, s. 3.)

**Editor's Note.** — The 1963 amendment rewrote the section.

The first 1965 amendment inserted in the second sentence the provisions as to operator's or chauffeur's license.

The second 1965 amendment rewrote the last sentence. Section 5 of the amenda-

tory act provides that it shall be in full force and effect 60 days from and after ratification. It was ratified June 17, 1965.

**Cited in** *Griffin v. Hartford Acc. & Indem. Co.*, 264 N.C. 212, 141 S.E.2d 300 (1965).

**§ 20-312. Failure of owner to deliver certificate of registration and plates after revocation.**—Failure of an owner to deliver the certificate of registration and registration plates issued by the Department of Motor Vehicles, after revocation thereof as provided in this article, shall constitute a misdemeanor. (1957, c. 1393, s. 4.)

**§ 20-313. Operation of motor vehicle without financial responsibility as misdemeanor.**—(a) On or after July 1, 1963, any owner of a motor vehicle registered or required to be registered in this State who shall operate or permit such motor vehicle to be operated in this State without having in full force and effect the financial responsibility required by this article shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

(b) Evidence that the owner of a motor vehicle registered or required to be registered in this State has operated or permitted such motor vehicle to be operated in this State, coupled with proof of records of the Department of Motor Vehicles indicating that the owner did not have financial responsibility applicable to the operation of the motor vehicle in the manner certified by him for purposes of G.S. 20-309, shall be prima facie evidence that such owner did at the time and place alleged operate or permit such motor vehicle to be operated without having in full force and effect the financial responsibility required by the provisions of this article. (1957, c. 1393, s. 5; 1959, c. 1277, s. 3; 1963, c. 964, s. 5.)



**Editor's Note.**—The 1963 amendment rewrote this section.

**Applied in** *Underwood v. National Grange Mut. Liab. Co.*, 258 N.C. 211, 128 S.E.2d 577 (1962).

**Cited in** *Griffin v. Hartford Acc. & Indem. Co.*, 264 N.C. 212, 141 S.E.2d 300 (1965).

**§ 20-313.1. Making false certification or giving false information a misdemeanor.**—(a) Any owner of a motor vehicle registered or required to be registered in this State who shall make a false certification concerning his financial responsibility for the operation of such motor vehicle shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

(b) Any person, firm, or corporation giving false information to the Department concerning another's financial responsibility for the operation of a motor vehicle registered or required to be registered in this State, knowing or having reason to believe that such information is false, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1963, c. 964, s. 6.)

**§ 20-314. Applicability of article 9A; its provisions continued.**—The provisions of article 9A, chapter 20 of the General Statutes, as amended, which pertain to the method of giving and maintaining proof of financial responsibility and which govern and define "motor vehicle liability policy" and assigned risk plans shall apply to filing and maintaining proof of financial responsibility required by this article. It is intended that the provisions of article 9A, chapter 20 of the General Statutes, as amended, relating to proof of financial responsibility required of each operator and each owner of a motor vehicle involved in an accident, and relating to nonpayment of a judgment as defined in G.S. 20-279.1, shall continue in full force and effect. (1957, c. 1393, s. 6; 1963, c. 964, s. 7.)

**Editor's Note.**—The 1963 amendment inserted "as amended" at two places in this section.

**This section does not incorporate § 20-279.22** in this article. *Faizan v. Grain Dealers Mut. Ins. Co.*, 254 N.C. 47, 118 S.E.2d 303 (1961).

**Insurance policies and insurers' certificates** required by both article 9A of this

chapter and this article, are defined by article 9A. *Faizan v. Grain Dealers Mut. Ins. Co.*, 254 N.C. 47, 118 S.E.2d 303 (1961).

**Quoted in** *Swain v. Nationwide Mut. Ins. Co.*, 253 N.C. 120, 116 S.E.2d 482 (1960).

**Cited in** *Nixon v. Liberty Mut. Ins. Co.*, 258 N.C. 41, 127 S.E.2d 892 (1962); *Daniels v. Nationwide Mut. Ins. Co.*, 258 N.C. 660, 129 S.E.2d 314 (1963).

**§ 20-315. Commissioner to administer article; rules and regulations.**—The Commissioner of Motor Vehicles shall administer and enforce the provisions of this article relating to registration of motor vehicles and may make necessary rules and regulations for its administration. (1957, c. 1393, s. 7.)

**Quoted in** *Levinson v. Travelers Indem. Co.*, 258 N.C. 672, 129 S.E.2d 297 (1963).

**§ 20-316:** Repealed by Session Laws 1963, c. 964, s. 8.

**§ 20-317. Insurance required by any other law; certain operators not affected.**—This article shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this article, may be certified as proof of financial responsibility under this article; provided, however, that nothing contained in this article shall affect operators of motor vehicles that are now or hereafter required to furnish evidence of insurance or financial responsibility to the North Carolina Utilities Commission or the Interstate Commerce Commission or both, but to the extent that any insurance policy, bond or other agreement filed with or certified to the North Carolina Utilities Commission or Interstate Commerce Commission as evidence of financial responsibility affords

less protection to the public than the financial responsibility required to be certified to the Department of Motor Vehicles under this article as a condition precedent to registration of motor vehicles, the amounts, provisions and terms of such policy, bond or other agreement so certified shall be deemed to be modified to conform to the financial responsibility required to be proved under this article as a condition precedent to registration of motor vehicles in this State. It is the intention of this section to require owners of self-propelled motor vehicles registered in this State and operated under permits from the North Carolina Utilities Commission or the Interstate Commerce Commission to show and maintain proof of financial responsibility which is at least equal to the proof of financial responsibility required of other owners of self-propelled motor vehicles registered in this State. (1957, c. 1393, s. 9; 1959, c. 1252, s. 1.)

**§ 20-318. Federal, State and political subdivision vehicles excepted.**—This article does not apply to any motor vehicle owned by the State of North Carolina or by a political subdivision of the State, nor to any motor vehicle owned by the federal government. (1957, c. 1393, s. 10.)

**§ 20-319. Effective date.**—This article shall be effective from and after January 1, 1958. (1957, c. 1393, s. 12; 1961, c. 276.)

**Cited in** *Faizan v. Grain Dealers Mut. Ins. Co.*, 254 N.C. 47, 118 S.E.2d 303 (1961).

#### ARTICLE 14.

#### *Driver Training School Licensing Law.*

**§ 20-320. Definitions.**—As used in this article:

- (1) "Commercial driver training school" or "school" means a business enterprise conducted by an individual, association, partnership or corporation which educates or trains persons to operate or drive motor vehicles or which furnishes educational materials to prepare an applicant for an examination given by the State for an operator's or chauffeur's license or learner's permit, and charges a consideration or tuition for such service or materials.
- (2) "Commissioner" means the Commissioner of Motor Vehicles.
- (3) "Instructor" means any person who operates a commercial driver training school or who teaches, conducts classes, gives demonstrations, or supervises practical training of persons learning to operate or drive motor vehicles in connection with operation of a commercial driver training school. (1965, c. 873.)

**Editor's Note.**—In Session Laws 1965, For the sake of uniformity in the numbering system of the General Statutes, they c. 873, adding this article, the sections thereof were numbered 20-330 to 20-338. have been renumbered 20-320 to 20-328.

**§ 20-321. Enforcement of article by Commissioner.**—(a) The Commissioner shall, subject to the provisions of article 18 of chapter 143 of the General Statutes of North Carolina, adopt and prescribe such regulations concerning the administration and enforcement of this article as are necessary to protect the public. The Commissioner or his authorized representative shall have the duty of examining applicants for commercial driver training school and instructor's licenses, licensing successful applicants, and inspecting school facilities and equipment.

(b) The Commissioner shall administer and enforce the provisions of this article, and may call upon the State Superintendent of Public Instruction for assistance in developing and formulating appropriate regulations. (1965, c. 873.)

**§ 20-322. Licenses for schools necessary; regulations as to requirements.**—(a) No commercial driver training school shall be established nor any such existing school be continued on or after July 1, 1965, unless such school

applies for and obtains from the Commissioner a license in the manner and form prescribed by the Commissioner.

(b) Regulations adopted by the Commissioner shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond or other security in such sum and with such provisions as the Commissioner deems necessary to protect adequately the interests of the public, and such other matters as the Commissioner may prescribe. (1965, c. 873.)

**§ 20-323. Licenses for instructors necessary; regulations as to requirements.**—(a) No person shall act as an instructor on or after July 1, 1965, unless such person applies for and obtains from the Commissioner a license in the manner and form prescribed by the Commissioner.

(b) Regulations adopted by the Commissioner shall state the requirements for an instructor's license, including requirements concerning moral character, physical condition, knowledge of the courses of instruction, knowledge of the motor vehicle laws and safety principles, previous personal and employment records, and such other matters as the Commissioner may prescribe, for the protection of the public. (1965, c. 873.)

**§ 20-324. Expiration and renewal of licenses; fees.**— All licenses issued under the provisions of this article shall expire on the last day of June in the year following their issuance and may be renewed upon application to the Commissioner as prescribed by his regulations. Each application for a new or renewal school license shall be accompanied by a fee of twenty-five dollars (\$25.00), and each application for a new or a renewal instructor's license shall be accompanied by a fee of five dollars (\$5.00). The license fees collected under this section shall be placed in a special fund to be designated the "Commercial Driver Training Law Fund" and shall be used under the supervision and direction of the Director of the Budget for the administration of this article. No license fee shall be refunded in the event that the license is rejected, suspended, or revoked. (1965, c. 873.)

**§ 20-325. Cancellation, suspension, revocation, and refusal to issue or renew licenses.**—The Commissioner may cancel, suspend, revoke, or refuse to issue or renew a school or instructor's license in any case where he finds the licensee or applicant has not complied with, or has violated any of the provisions of this article or any regulation adopted by the Commissioner hereunder. A suspended or revoked license shall be returned to the Commissioner by the licensee, and its holder shall not be eligible to apply for a license under this article until twelve months have elapsed since the date of such suspension or revocation. (1965, c. 873.)

**§ 20-326. Exemptions from article.**—The provisions of this article shall not apply to any person giving driver training lessons without charge, to employers maintaining driver training schools without charge for their employees only, or to schools or classes conducted by colleges, universities and high schools. (1965, c. 873.)

**§ 20-327. Penalties for violating article or regulations.**—Violation of any provision of this article or any regulation promulgated pursuant hereto, shall constitute a misdemeanor, and any person, firm, or corporation upon conviction thereof shall be punished by a fine of not more than one hundred dollars (\$100.00) or by imprisonment for not more than thirty days, or by both such fine and imprisonment. (1965, c. 873.)

**§ 20-328. Administration of article.**—This article shall be administered by the Driver Education and Accident Records Division of the Department of Motor Vehicles with no additional appropriation. (1965, c. 873.)



STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

*December 1, 1965*

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing recompilation of the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

THOMAS WADE BRUTON

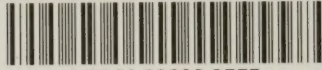
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